

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4
5 UNITED STATES OF AMERICA,)
6 Plaintiff,) No. 14 CR 447
7 vs.) Chicago, Illinois
8 HAKEEM EL BEY,) March 4, 2015
9 Defendant.) 9:30 a.m.

VOLUME 3
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RICHARD A. POSNER
AND A JURY

11 For the Plaintiff: U.S. ATTORNEY'S OFFICE
12 219 South Dearborn Street
Chicago, Illinois 60604
13 BY: MR. CHRISTOPHER HOTALING
MS. KATHRYN E. MALIZIA

14 The Defendant: MR. HAKEEM EL BEY
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16 Defense Standby Counsel: JENNER & BLOCK
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18 BY: MR. GABRIEL A. FUENTES

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1 (Proceedings heard in open court:)

2 THE CLERK: 14 CR 447, U.S.A. versus Hakeem El Bey.

3 For trial.

4 MS. MALIZIA: Good morning, your Honor.

5 Kathryn Malizia and Chris Hotaling on behalf of the
6 United States.

7 MR. HOTALING: Good morning, your Honor.

8 THE COURT: Good morning, everybody.

9 THE DEFENDANT: Good morning, everyone.

10 MR. FUENTES: Gabriel Fuentes here, standby counsel.

11 Thank you.

12 THE COURT: So before we bring in the jury, I want to
13 explain particularly of course to Mr. El Bey the next phase in
14 the case.

15 Now, we're not finished with the government's case
16 because the government has one more witness, right? That's
17 correct?

18 MS. MALIZIA: That's correct, your Honor.

19 THE COURT: And then you rest.

20 Okay. At that point it's your turn, Mr. El Bey, and you
21 will be able to introduce documents the way the government did.
22 You'll be able to testify.

23 If you're asked a question that you think is an improper
24 question, you can make an objection and then I rule on the
25 objection.

1 THE DEFENDANT: I don't plan on testifying, no.

2 THE COURT: Okay. That's fine. You have absolutely no
3 obligation to testify.

4 But now with regard to the exhibits, here is the
5 problem: So you have to give a copy -- or if you don't have
6 extra copies we'll make extra copies -- you have to give the
7 copies of your exhibits to the government so that they can make
8 objections if they want and then I rule on the objections.

9 So that has to be done before we bring in the jury.
10 That's done out of the presence of the jury.

11 THE DEFENDANT: Okay, Judge. Okay.

12 Judge, I don't have a problem with that. We talked
13 about it.

14 The only documents I'm bringing are just documents from
15 Internal Revenue Service.

16 THE COURT: I'm sorry. I didn't hear you.

17 THE DEFENDANT: The only documents I'm going to bring,
18 enter into the case are documents just from Internal Revenue
19 Service. Just the documents they use, Internal Revenue Service.

20 I'm not bringing anything but Internal Revenue Service
21 documents. So I don't see why that would be a problem.

22 THE COURT: I see. So your exhibits will be --

23 THE DEFENDANT: Only from Internal Revenue Service.

24 THE COURT: Like theirs.

25 THE DEFENDANT: My only exhibits I'm bringing is from

1 Internal Revenue Service and mail from --

2 MR. HOTALING: The government?

3 THE DEFENDANT: -- the government, yes, sir.

4 THE COURT: Okay. So -- but we need you to --

5 THE DEFENDANT: I have copies for everybody.

6 THE COURT: -- tell them in advance or show them in
7 advance.

8 THE DEFENDANT: Okay. In my time I will. I got copies
9 for everybody. He was over at my house, so I did everything I
10 needed do.

11 MR. HOTALING: We would appreciate a copy whenever you
12 would be willing to offer it to us.

13 THE COURT: Okay. So the government has one witness,
14 but the -- the objections that the government may or may not
15 make -- I suppose they wouldn't object if it's their own
16 documents -- but they have a right to object to any exhibits you
17 wish to introduce, and that has to be done out of the presence of
18 the jury.

19 So I'd rather do it now.

20 THE DEFENDANT: Okay. I will.

21 THE COURT: So if you could tell them what the documents
22 are and give them a copy.

23 THE DEFENDANT: I will get them.

24 THE COURT: Great.

25 THE DEFENDANT: I have one for everyone. Would you like

1 one now?

2 THE COURT: Sure.

3 THE DEFENDANT: Can I approach the bench, your Honor?

4 THE COURT: Of course.

5 THE DEFENDANT: I'm harmless.

6 THE COURT: That's fine.

7 THE DEFENDANT: I promise.

8 THE COURT: No problem.

9 THE DEFENDANT: I'm harmless.

10 LAW CLERK: Thank you very much.

11 THE DEFENDANT: This is documents from my trust to prove
12 my case, Judge, just from Internal Revenue Service. Just to show
13 that I haven't defrauded the government.

14 That's all I want to do.

15 But I'm not doing anything exquisite or that I -- just
16 straight to the facts. And I have one witness.

17 THE COURT: Um-hum.

18 THE DEFENDANT: Okay.

19 MS. MALIZIA: Your Honor, we would object to this from a
20 foundation standpoint. This is not --

21 THE COURT: I'm sorry. Could you speak a little louder?

22 MS. MALIZIA: We would object to this from a foundation
23 standpoint.

24 This is not a document that the government admitted in
25 their case, and it's a little unclear to me how Mr. El Bey

1 intends to tender it.

2 THE DEFENDANT: It was documents sent to me from the
3 government for my trust. And it's -- I don't know what you are
4 objecting about. It's part of the case.

5 THE COURT: Is it an authentic document?

6 MS. MALIZIA: I have no idea, your Honor.

7 THE DEFENDANT: It's authentic. It's from the Internal
8 Revenue Service. It has a date. It's from the Internal Revenue
9 Service. It says for Internal Revenue Service use only.

10 It's everything from the -- I just made copies of it,
11 Judge. I got it put up in my files.

12 Only thing I did was made 17 copies to let them see,
13 everybody see.

14 I haven't objected to anything they said. And this is
15 dealing with the case, Internal Revenue Service, and it's dealing
16 with the trust. Everything they show, it goes on there. One
17 exhibit.

18 THE COURT: I mean, the difficulty is that it looks
19 like -- it looks like a copy of an authentic IRS document, but
20 the government is entitled to some kind of --

21 THE DEFENDANT: It is a copy, Judge. Same thing they
22 sent me, but a copy.

23 I haven't did anything. Yes, Judge, look at the
24 document. I don't even -- me and you both know that, come on,
25 Judge. Look, we's trying to do everything, I be trying to be

1 good, be honest. I'm trying to be fair, Judge. And all I want
2 is a little fairness back.

3 I don't want to sit in nobody's jail. I don't want to
4 do anything. I need a fair chance to show what they're saying is
5 wrong. And I can't do that without this. You're not giving me a
6 chance.

7 THE COURT: Okay. Let me just ask the government
8 lawyers: Is Mr. Bodner still present?

9 MS. MALIZIA: He is present in court, your Honor. He is
10 not, however, an IRS revenue agent. He is a criminal
11 investigator and could not --

12 THE COURT: Yes. But as a criminal investigator he sees
13 a lot of IRS documents. Would he be able to testify that --

14 MS. MALIZIA: That this is an original IRS document.
15 No, your Honor, he could not.

16 THE DEFENDANT: It got numbers at the top. Judge, it
17 got docket number -- it got numbers at the top that we can call
18 and find out. It's an original letter from the Internal Revenue
19 Service.

20 I wouldn't dare bring anything in here that wasn't true.
21 I have been holding case -- I have been holding that for this
22 time for my exhibits.

23 MR. HOTALING: Judge, if we could just have a moment?

24 THE COURT: Excuse me?

25 MR. HOTALING: If we could have a moment, please?

1 THE COURT: Of course.

2 MR. HOTALING: And Judge --

3 THE COURT: You are conferring.

4 MR. HOTALING: If you would allow us an opportunity to
5 confer quickly and we will be back to you in just a moment.

6 THE COURT: Okay.

7 (Pause.)

8 THE COURT: Okay. So yes? You wish to say something,
9 Ms. Malizia?

10 MS. MALIZIA: Your Honor, we are willing to stipulate on
11 the authenticity of this exhibit.

12 THE COURT: Excuse me?

13 MS. MALIZIA: We are willing to stipulate to the
14 authenticity of this exhibit. And if Mr. El Bey wishes to move
15 it into evidence now, it could potentially be relevant to our
16 direct examination of Special Agent Howard.

17 Of course, this is an order of proof issue. So if Mr.
18 El Bey chooses instead to introduce it in his affirmative case,
19 we would have the right to call Agent Howard in rebuttal. It's
20 really just a question of how the Court wants to handle it.

21 THE COURT: Well, that's fine.

22 THE DEFENDANT: I wouldn't have a problem with that at
23 all.

24 THE COURT: So it's in.

25 MS. MALIZIA: Okay. Good.

1 MR. HOTALING: And, Judge, just so the record is clear,
2 should we just mark this as Defense Exhibit No. 1?

3 THE DEFENDANT: Yes. I have two more.

4 MR. HOTALING: So for purposes of the record Defense
5 Exhibit No. 1 has been admitted into evidence.

6 THE COURT: Yes.

7 (Defense Exhibit 1 received in evidence.)

8 THE DEFENDANT: Should I show all my exhibits?

9 THE COURT: Yes.

10 MR. HOTALING: All good. All good.

11 THE DEFENDANT: The exhibits, Judge, just the envelopes
12 that they mailed to me.

13 THE COURT: Okay. Excuse me just one second.

14 THE DEFENDANT: Yes, sir.

15 (Pause.)

16 THE COURT: Yes.

17 THE DEFENDANT: Yes, sir. Judge, do you want to take a
18 look at them? Is it okay if I pass them up?

19 THE COURT: Do you have copies for the government?

20 THE DEFENDANT: I couldn't make copies for them though,
21 Judge.

22 MR. HOTALING: He has shown them to us in the room while
23 you were talking with the CSO.

24 THE COURT: Oh, they are just the envelopes.

25 THE DEFENDANT: Yes, sir. That's all.

1 THE COURT: I'm just a little puzzled.

2 Okay. So do you have an objection?

3 MS. MALIZIA: Your Honor, they appear to be envelopes
4 that we, as counsel, would have mailed to the defendant
5 containing I suspect discovery. I'm not really sure what their
6 relevance would be.

7 THE COURT: Yes. It has Mr. Hotaling's name.

8 MR. HOTALING: I think there is an issue of relevance.

9 Obviously if they were envelopes submitted by the IRS,
10 that is germane to what we are talking about. I guess we would
11 ask for an order of proof as to the relevance of why he would
12 intending to be using envelopes that we sent to him, from the
13 government, in connection with this litigation.

14 THE DEFENDANT: Okay. And I can answer that.

15 THE COURT: Yes.

16 THE DEFENDANT: The purpose of this is they had me down
17 for mail fraud. My point is, I work for the postal system. I
18 know exactly how the postal system work.

19 And, Judge, that red stamp mark on there, that's mail
20 fraud.

21 THE COURT: The red stamp is mail fraud?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Where it says: Postage \$3?

24 THE DEFENDANT: Yes, sir. Because it hasn't been
25 cancelled out. So either --

1 MR. HOTALING: You are accusing us of mail fraud?

2 THE DEFENDANT: Your name on it. You sent it.

3 You got me for mail fraud. I'm going to show you what
4 mail fraud really is.

5 MS. MALIZIA: Your Honor, we object.

6 THE DEFENDANT: I can prove the point. And then I would
7 subpoena -- I would like to subpoena the postmaster.

8 THE COURT: Okay. But, wait. But the problem, Mr. El
9 Bey --

10 THE DEFENDANT: Yes, sir.

11 THE COURT: -- is that if Mr. Hotaling has committed
12 mail fraud, then you could certainly -- you could write the U.S.
13 Attorney, his boss --

14 MR. HOTALING: He is my boss.

15 THE COURT: -- and say that Mr. Hotaling should be
16 investigated and possibly prosecuted for mail fraud.

17 But it wouldn't have anything to do with your case.

18 THE DEFENDANT: It would. Because they got me for mail
19 fraud.

20 THE COURT: No, I know. But if you are guilty of mail
21 fraud, the fact that others, including government officials, are
22 also guilty of mail fraud would not be a defense.

23 THE DEFENDANT: Okay. But what I'm trying to show to
24 you is, it has the same stamp on it that my envelopes had on it.
25 So my point to you is this: I work for the postal service, I

1 know exactly how it work. It has to be cancelled out. That
2 hasn't been cancelled out.

3 So just like if I subpoenaed the postmaster, he would
4 tell them they are not responsible for the mail fraud, he is.

5 Just like with me. I wouldn't be responsible for it,
6 they would be.

7 THE COURT: I know. But my point is even if they have
8 committed mail fraud -- which I think somewhat unlikely, but even
9 if there -- but who knows? we just heard yesterday --

10 THE DEFENDANT: I'm telling you facts, Judge. I'm just
11 not going on. I have been there 31 years.

12 THE COURT: I understand. We just heard yesterday --

13 THE DEFENDANT: I beg your pardon?

14 THE COURT: We just heard yesterday that Hillary
15 Clinton, when she was Secretary of State, did not use the
16 official email. And as a result, 55,000 or 50,000 pages of
17 documents were not kept in the proper way.

18 Okay. So government officials can engage in misconduct.
19 That's true. And then it could even be in the Justice
20 Department.

21 But it wouldn't make any difference to your case.
22 Because it's not a defense to a criminal prosecution that other
23 people, even the prosecutors, are engaged in criminal activity
24 unless that criminal activity directly affects you.

25 THE DEFENDANT: Let me ask you a question, Judge.

1 THE COURT: If their witnesses perjured themselves, that
2 would be misconduct highly relevant to your defense.

3 But how would what they do with their mailings -- I
4 mean, you got it, it was delivered. If it was --

5 THE DEFENDANT: whoever name is on the envelope --

6 THE COURT: Pardon?

7 THE DEFENDANT: -- is who is responsible. So whoever
8 name is on this envelope is responsible. Just like my name on --
9 can I explain to you?

10 THE COURT: But you got it. But it was delivered to
11 you.

12 THE DEFENDANT: Yeah, it was delivered to me, I know.

13 But what I'm trying to say to you, Judge, is this:
14 whenever a stamp is put on an envelope, it automatically inject
15 in the universal postal system.

16 So what I'm saying to you is this: They step in because
17 if -- if it hasn't been cancelled out, it's very important. If
18 it has not been cancelled out, then someone has committed mail
19 fraud if the individual bring it to a point.

20 THE COURT: No, no.

21 THE DEFENDANT: And then he can ask to have the
22 postmaster subpoenaed.

23 THE COURT: No, I understand your point. The problem is
24 it's not relevant because it's not -- it does not concern your
25 conduct.

1 So this is a trial about whether you defrauded the
2 government and violated mail fraud statutes.

3 THE DEFENDANT: Yes, sir, so --

4 THE COURT: So their conduct is not --

5 THE DEFENDANT: So I still want to subpoena the
6 postmaster who stamped my envelopes that they say was mail fraud.

7 I want to go upstairs and fill out -- because I want to
8 subpoena him to prove that I haven't committed mail fraud. I
9 want to get that off me too.

10 THE COURT: Okay. But that's a separate issue,
11 subpoenaing the postmaster. That's separate from --

12 THE DEFENDANT: So in other words, I can't --

13 THE COURT: So these envelopes you cannot admit.

14 THE DEFENDANT: Okay.

15 THE COURT: But we are admitting -- I'm admitting your
16 communication from the government.

17 THE DEFENDANT: That's fair, Judge. That's fine.

18 THE COURT: Do you have any additional?

19 THE DEFENDANT: No, no. I'm not.

20 THE COURT: So the way it will work is that when the
21 government's case is finished, I will explain to the jury it's
22 now your turn, and that you have an exhibit you wish to --

23 THE DEFENDANT: Share with them.

24 THE COURT: -- admit, and that I have agreed that -- and
25 the government has agreed that it's an admissible document.

1 And, you know, you probably want to explain it to the
2 jury.

3 THE DEFENDANT: Yeah, I will. I will. And I promise
4 not to do anything to offend anyone and it won't be long.

5 MS. MALIZIA: Excuse me, your Honor. I think we have
6 agreed that that exhibit has already been admitted, if I'm
7 correct.

8 THE COURT: Excuse me?

9 MS. MALIZIA: I think we have agreed that that exhibit
10 has already been admitted into evidence, is that right?

11 THE COURT: Oh, I didn't know that. This was a -- this
12 was a --

13 MS. MALIZIA: This is a defense exhibit. We would
14 stipulate to its authenticity.

15 If the defendant wishes to have it admitted now, we are
16 fine with that. However, we may wish to use it in our
17 affirmative case or, alternatively, if the Court wishes to admit
18 it after the government has rested, we would reserve our right to
19 call Agent Howard back in rebuttal to testify about the content
20 of this document.

21 THE COURT: Yes, yes. You say this has already been
22 admitted?

23 MS. MALIZIA: Well, we --

24 MR. HOTALING: We are okay with that.

25 MS. MALIZIA: The defendant consented to its admission

1 earlier, and we are fine with it being admitted now with the
2 expectation that we may use it in our case.

3 THE COURT: Okay. Well, see, the way this works, Mr. El
4 Bey, so the government presents its case, almost finished, then
5 you have your case. Then the government has an opportunity to
6 rebut.

7 THE DEFENDANT: I don't have a problem with that, your
8 Honor.

9 THE COURT: But that's -- and this document, which has
10 been admitted, you can refer to, the government.

11 THE DEFENDANT: Yes. I don't have a problem with that.

12 THE COURT: Okay.

13 MS. MALIZIA: So just to be clear --

14 THE COURT: Hold on.

15 Yes.

16 MS. MALIZIA: Just to be clear, your Honor, since this
17 document has been admitted, the government can use it in its
18 affirmative case with the next witness?

19 THE COURT: Yes. Yes.

20 MS. MALIZIA: Thank you.

21 THE COURT: Okay. Well, I think we are about ready for
22 the jury now.

23 MS. MALIZIA: Your Honor, just to raise the issue, there
24 is a forfeiture allegation in this indictment. And if Mr. El Bey
25 exercises his right not to waive his right to a forfeiture jury,

1 we will need to advise this jury that they will have to stay and
2 decide the forfeiture question as well.

3 I just wanted to raise this issue for your Honor. It's
4 something that --

5 THE COURT: This is raising it awfully late.

6 MS. MALIZIA: Your Honor, it's -- I'm raising it only
7 because typically defense will waive the right to a forfeiture
8 jury. I'm not sure that that will be the case here. Mr. El Bey
9 has thus far not stipulated or waived his right to anything;
10 raising it now, because it's traditionally something that is
11 addressed after the government rests before the jury deliberates.

12 THE COURT: When you say "addressed," you mean --

13 MS. MALIZIA: With the jury.

14 THE COURT: Pardon?

15 MS. MALIZIA: With the jury. They are typically advised
16 after the government rests, that if the defendant exercises his
17 right to a forfeiture jury they may be detained to decide issues
18 of forfeiture as well.

19 THE COURT: Well, I'm sorry I didn't tell them earlier,
20 because, you know, they are anxious about next week.

21 MR. HOTALING: Judge, it --

22 MS. MALIZIA: I doubt it will take long, your Honor.
23 It's -- I can tender a copy of the forfeiture instructions to the
24 Court right now.

25 Or alternatively, Mr. El Bey -- again, this is presuming

1 that he is found guilty -- would perhaps elect to waive his right
2 to a forfeiture jury.

3 THE DEFENDANT: Judge, all I'm saying is I just need a
4 level playing field. You know, every time I look up it's
5 something new. I haven't did any -- you know, you got it on me,
6 and I'm doing the best I can because I can't admit the evidence
7 that I want to admit because I'm limited. You have got me
8 limited.

9 So now, every time I look up you give them everything
10 they want.

11 MS. MALIZIA: Your Honor --

12 THE DEFENDANT: You giving them everything. You make
13 this so I can't win. You making this so I can't win, Judge, you
14 making it so I can't raise a defense.

15 THE COURT: Wait a second. But I haven't said anything
16 yet about the forfeiture except I am surprised to have it --
17 maybe I'm supposed to know it, right? -- but I'm surprised to
18 have it mentioned so late.

19 And when am I supposed to tell the jury about this?

20 MS. MALIZIA: Your Honor, typically it's after the close
21 of all evidence.

22 After the government rests, defense rests, but before
23 the jury deliberates, if the defendant elects to exercise his
24 right to a forfeiture jury they may be retained to decide issues
25 of forfeiture as well.

1 THE COURT: Well, how would that work? I mean, what
2 kind of a -- are you going to present a parade of witnesses
3 again?

4 MS. MALIZIA: It's argument. Pure argument.

5 Your Honor, I can tender a copy of the instructions
6 right now. They are short, they are straightforward. There are
7 only -- there is two items of property that they will have to
8 decide whether or not they are forfeitable as proceeds of the
9 crime.

10 THE COURT: Just two.

11 MS. MALIZIA: Just two. There is the house and one of
12 the vehicles.

13 THE DEFENDANT: I'm not trying to forfeit anything, your
14 Honor. I don't know what we talking about this for. We didn't
15 mention this in the beginning. I don't know why we are doing
16 this now. So why are -- why are we doing this, Judge? I haven't
17 got --

18 THE COURT: Okay. Let me try to --

19 MR. HOTALING: Judge, actually what guides this
20 particular process in terms of forfeiture -- which again, this is
21 forfeiture that was alleged in the indictment way back last year
22 so there is lots of notice here on this, and --

23 THE COURT: What is it you want to forfeit? The house?

24 MR. HOTALING: The house and a car.

25 THE COURT: One car?

1 MS. MALIZIA: One car.

2 MR. HOTALING: It's alleged in the indictment.

3 It's governed by Rule 32.2 of the Federal Rules of
4 Criminal Procedure.

5 And it is in terms, of when: As soon as practical after
6 a verdict or finding of guilty, on any count in the indictment or
7 information regarding which criminal forfeiture is sought, the
8 Court must determine what property is subject to forfeiture under
9 the applicable statute.

10 Under the prevailing law, because we are in the middle
11 of a trial, the jury is required to make the finding with respect
12 to whether or not the property is in fact proceeds traceable to
13 the mail fraud scheme. And that's --

14 THE COURT: I see. You wouldn't --

15 MR. HOTALING: It's argument.

16 THE COURT: Because -- but you would be relying on all
17 the -- on exhibits.

18 MR. HOTALING: Already admitted.

19 MS. MALIZIA: That's correct.

20 THE COURT: Because you had all that about --

21 MR. HOTALING: Correct.

22 THE COURT: -- the cost of the house and the cars, and
23 so on?

24 MS. MALIZIA: That's right.

25 MR. HOTALING: Correct.

1 THE COURT: Well, Mr. El Bey, the government is entitled
2 to seek forfeiture. It would be very brief and it would just use
3 the documents they have.

4 THE DEFENDANT: I already know they going to do it,
5 Judge. So you know what --

6 THE COURT: But wait a second.

7 THE DEFENDANT: It's not an even playing field, Judge.
8 I don't have a chance.

9 THE COURT: But see, the problem is I can't -- the
10 government is entitled to seek forfeiture.

11 Now, the question for you is whether you would like me
12 to decide the forfeiture issue or the jury. That's the only
13 thing, unfortunately, that is open.

14 THE DEFENDANT: No. I would like the jury to decide.

15 THE COURT: Okay.

16 THE DEFENDANT: They don't -- if they going to decide
17 everything, let them do everything.

18 THE COURT: Okay. That's fine.

19 Okay. I think we are all set now.

20 MS. MALIZIA: Your Honor, looking ahead, would you like
21 to see a copy of our proposed forfeiture jury instructions?

22 THE COURT: Yeah. That would be nice. Thank you.

23 MS. MALIZIA: I have also tendered a copy to defense
24 counsel for the record.

25 MR. HOTALING: Judge, just to make sure we are

1 clarified, you don't have to inform the jury that they are going
2 to have to make this finding. We just need to relay this to the
3 Court that this is an issue.

4 THE COURT: I'm sorry. I don't have to do what?

5 MR. HOTALING: You don't have to tell the jury that if
6 they find -- like right now, you don't have to tell the jury that
7 if they find him guilty they are going to have to stick around
8 and do the forfeiture.

9 The reason that we raise this is because this is an
10 issue that you need to know as part of your --

11 THE COURT: When do you want me to tell the jury?

12 MR. HOTALING: Judge, I think it would be something, now
13 that we have addressed and now that we do know that Mr. El Bey is
14 seeking a forfeiture jury, that we would tell them after they
15 return their verdict.

16 MR. FUENTES: Judge, the defendant stepped out of the
17 courtroom.

18 MR. HOTALING: Oh, I didn't even know he left. I'm
19 sorry.

20 (Pause. Defendant in.)

21 THE COURT: Okay. Welcome back. So we're all -- excuse
22 me?

23 THE DEFENDANT: You made me nervous. I had to use the
24 washroom.

25 THE COURT: I'm sorry. I'm sorry.

1 MR. HOTALING: You make me nervous too.

2 To clarify now, for purposes of the record now that the
3 defendant is present, I think under the rule the appropriate
4 procedure is what we would do is that if and only if the jury
5 returns a verdict of guilty, at that point in time the judge
6 would inform them that they still have one additional
7 responsibility that they need to complete.

8 THE COURT: Okay.

9 MR. HOTALING: And that is to entertain argument with
10 respect to forfeiture.

11 Again -- and so I think that's what we would do.

12 Now that we have addressed this issue, I think we have
13 addressed all the notice issues and that the Court is fully
14 addressed of that issue.

15 THE COURT: Okay. So we will call in the jury and we
16 will move quickly.

17 (At 10:12 a.m. jury in.)

18 THE COURT: All right. Welcome back.

19 I'm sorry that we kept you waiting. There was some
20 administrative matters that had to be attended to. I didn't
21 think they would take so long, but they did.

22 But anyway, we will move quickly today. The trial is
23 nearing its end.

24 So the government has one more witness that it wants to
25 present.

Howard - Direct by Malizia

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1 So, Ms. Malizia.

2 MS. MALIZIA: The government calls Special Agent Greg
3 Howard.

4 THE CLERK: Raise your right hand.

5 (witness sworn.)

6 THE CLERK: Be seated.

7 STEPHEN GREG HOWARD, GOVERNMENT'S WITNESS, SWORN

8 DIRECT EXAMINATION

9 BY MS. MALIZIA:

10 Q. Special Agent Howard, would you please state your name and
11 spell it for the jury?

12 A. Stephen Howard. S-T-E-P-H-E-N, H-O-W-A-R-D. I go by Greg.

13 Q. Special Agent Howard, where do you currently work?

14 A. I work for the IRS criminal investigation division in
15 Phoenix.

16 Q. And where did you work before you took that post?

17 A. Here in Chicago.

18 Q. How long did you work in the Chicago office of the IRS?

19 A. A little over six and a half years.

20 Q. And what is your position with the -- what was your position
21 with the Chicago field office of the IRS?

22 A. Also a special agent.

23 Q. What were your duties as a special agent?

24 A. Primarily to investigate violations of the Internal Revenue
25 Service Code and related offenses.

1 Q. What did you do before you joined the IRS?

2 A. I worked in banking for approximately five years.

3 Q. Could you tell us a little bit about your educational
4 background?

5 A. I have a bachelor's degree in law enforcement and a master's
6 degree in accounting.

7 Q. Special Agent Howard, are you familiar with the investigation
8 of the defendant, Hakeem El Bey?

9 A. Yes, I am.

10 Q. What was your role in that investigation?

11 A. I was the primary investigator regarding Mr. El Bey. I
12 conducted an interview with him and reviewed bank and tax
13 filings. Bank records and tax filings.

14 Q. Directing your attention to December 21st, 2012, did you
15 interview the defendant on that date as part of your
16 investigation?

17 A. Yes, I did.

18 Q. Would you recognize the defendant if you saw him today?

19 A. Yes.

20 Q. I want you to look around the courtroom, and if you see the
21 defendant, if you see Mr. El Bey, identify him by an article of
22 his clothing.

23 A. Yes. He is at the defense table wearing a black and gray
24 sweater and a black hat.

25 MS. MALIZIA: Your Honor, may the record reflect that

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1 Special Agent Howard has identified the defendant Hakeem El Bey?

2 THE COURT: Yes.

3 BY MS. MALIZIA:

4 Q. Turning back to the interview of Mr. El Bey, where did that
5 interview take place?

6 A. The IRS office in Schiller Park.

7 Q. Was anyone else present during the interview?

8 A. Yes. Another Special Agent, Pat Creen.

9 Q. How did you introduce yourselves to the defendant?

10 A. As special agents with the IRS criminal investigation.

11 Q. Did you also display your badges or creds?

12 A. Yes.

13 Q. Did you explain to the defendant -- was the defendant under
14 arrest when he was at the IRS's offices?

15 A. No.

16 Q. Were any promises or threats made to the defendant to induce
17 him to submit to this interview?

18 A. No.

19 Q. During the interview of the defendant, did you ask the
20 defendant his date of birth?

21 A. Yes.

22 Q. How did he respond?

23 A. He said it was February 19th, 1959.

24 Q. Did you ask him his current address?

25 A. Yes.

1 Q. How did he respond?

2 A. 439 Hoxie Avenue in Calumet City.

3 Q. Did you ask him what his birth name was?

4 A. Yes.

5 Q. How did he respond?

6 A. He stated it was Frederick Wade Jones.

7 Q. Did you ask him whether he had changed his name?

8 A. Yes.

9 Q. How did he respond?

10 A. That he had. First to Abdul Hakeem Muhammad, and then again
11 in approximately 2002 to Hakeem El Bey.

12 Q. Did you ask the defendant where he was employed?

13 A. Yes.

14 Q. How did he respond?

15 A. That he had been employed with the United States Postal
16 Service at the bulk mail center in Forest Park, Illinois.

17 Q. Did he say how long he had been employed there?

18 A. Yes. At the time of the interview it was approximately
19 28 years.

20 Q. Did you ask him whether he was currently working for the
21 postal service?

22 A. Yes.

23 Q. How did he respond?

24 A. He said that at the time of the interview he had been off on
25 workmen's compensation for about a year.

Howard - Direct by Malizia

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1 Q. During the interview did you show the defendant copies of tax
2 returns in the name of the Hakeem El Bey Trust for tax years 2008
3 and 2009?

4 A. Yes.

5 MS. MALIZIA: If we could pull up Government Exhibits
6 IRS 6 and 7.

7 Your Honor, these have already been admitted into
8 evidence. The government requests permission to publish on a
9 rolling basis evidence that has already been admitted.

10 Sorry, your Honor. May we have permission to publish to
11 the jury evidence that has already been admitted?

12 THE COURT: Sure.

13 MS. MALIZIA: Thank you.

14 THE COURT: Yes.

15 BY MS. MALIZIA:

16 Q. All right. Mr. Howard, you have displayed on your screen
17 Government Exhibits IRS 6 and 7. Are these copies of the returns
18 you showed to the defendant?

19 A. Yes, they are.

20 Q. Did you ask the defendant whether he had filed these two
21 returns?

22 A. Yes.

23 Q. How did he respond?

24 A. He said that he did file them.

25 Q. Did you ask him about the address on the returns?

1 A. Yes.

2 Q. And that address is 10134 South Calumet Avenue, Chicago,
3 Illinois, is that correct?

4 A. Yes, that's correct.

5 Q. What did he say about this address?

6 A. That that was his parents' address, which is where he was
7 staying at the time these returns were prepared and filed.

8 Q. Did you ask him about the line items on this form?

9 A. Yes.

10 Q. And did he say how he had come up with these various line
11 items?

12 A. Yes. He stated that he came up with them on his own from
13 studying on the Internet.

14 Q. Did you ask him specifically about the \$900,000 listed as
15 trust income on these forms?

16 A. Yes.

17 Q. How did he respond?

18 A. That he had added up his income earned over the years of
19 working, and that's how he arrived at that figure.

20 Q. Did you ask the defendant why this figure did not change
21 between the 2008 and the 2009 return?

22 A. Yes.

23 Q. How did he respond?

24 A. That he just went with the same figure for both years.

25 Q. Did you ask --

1 THE COURT: Could you speak a little louder, Mr. Howard?

2 THE WITNESS: Sure. I apologize.

3 THE COURT: A little louder.

4 THE WITNESS: Sure.

5 BY MS. MALIZIA:

6 Q. Did you ask the defendant how -- did you ask the defendant
7 how he came up with the \$900,000 amount in fiduciary fees?

8 A. Yes.

9 Q. How did he respond?

10 A. That he knew at the time but he didn't recall when we spoke
11 with him -- with him.

12 Q. Did he say anything else about this figure?

13 A. Yes. I believe he also stated with regard to this figure
14 that he chose to reserve his rights.

15 Q. Did you ask the defendant what he meant by, quote, reserve
16 his rights?

17 A. Yes.

18 Q. How did he respond?

19 A. We asked him, by stating that, if he refused to answer
20 questions. And he said no, that he just was reserving his rights
21 with certain questions. And the interview continued.

22 Q. And did the defendant later say that he, quote, reserved his
23 rights with respect to other questions during your interview?

24 A. Yes.

25 Q. Did he continue, however, to voluntarily answer questions on

1 which he did not, quote, reserve his rights?

2 A. Yes.

3 Q. Did you ask the defendant whether he did in fact receive
4 \$900,000 each year as the fiduciary of the Hakeem El Bey Trust?

5 A. Yes.

6 Q. How did he respond?

7 A. That he had not.

8 Q. Did you ask him about the exemption amount listed on these
9 forms of \$7,950?

10 A. Yes.

11 Q. How did he respond?

12 A. That he knew at the time these returns were prepared, but he
13 did not remember when we spoke to him.

14 Q. Did you ask him about the withholding amount of \$300,000?

15 A. Yes.

16 Q. How did he respond?

17 A. That he wanted to reserve his rights.

18 Q. Did you ask Mr. El Bey about the handwriting at the top and
19 along the sides of these forms that reads: Docket number
20 2002053704?

21 A. Yes.

22 Q. How did he respond?

23 A. That he had filed a document in North Carolina declaring his
24 Moorish nationality.

25 Q. During this interview did you show the defendant copies of

1 two Treasury checks?

2 A. Yes.

3 MS. MALIZIA: If we could pull up now Government Exhibit
4 IRS 9 and 10 and display both of them on the screen.

5 BY MS. MALIZIA:

6 Q. Special Agent Howard, are these copies of the checks that you
7 showed Hakeem El Bey?

8 A. Yes, they are.

9 Q. Did you ask him whether he received them?

10 A. Yes.

11 Q. How did he respond?

12 A. That yes, he did receive them.

13 Q. Did you ask him whether he had deposited them in his bank
14 account?

15 A. Yes.

16 Q. How did he respond?

17 A. That he did deposit them into trust accounts at Wells Fargo
18 Bank.

19 Q. Did you ask the defendant about the endorsements on the back
20 of these checks?

21 A. Yes.

22 Q. How did he respond?

23 A. That they were his signature.

24 Q. Did you ask the defendant whether he had received a total of
25 \$600,000 in refunds as a result of depositing these checks?

1 A. Yes.

2 Q. How did he respond?

3 A. That he did receive that money.

4 Q. During your interview did you show the defendant copies of
5 tax returns in the name of Hakeem El Bey Trust for tax years
6 2007, 2006 and 2008, two of those forms being from tax year 2007?

7 A. Yes.

8 Q. I think we will have to show these in tandem, but displayed
9 on the screen in front of you --

10 MS. MALIZIA: If we could pull up Government Exhibits
11 IRS 3, 4, 5 and 8 in succession. Beginning with 3 -- well, you
12 know what, if we go to the default folder they should be in
13 there.

14 MR. HOTALING: 3.

15 MS. MALIZIA: Right.

16 BY MS. MALIZIA:

17 Q. Was this one of the returns -- this is Government Exhibit IRS
18 3. Was this one of the returns you asked the defendant about?

19 A. Yes.

20 Q. And you showed him a copy of this return, correct?

21 A. That's correct.

22 MS. MALIZIA: If we could pull up Government Exhibit IRS
23 4, Page 2. It should be -- I think we should just stick to the
24 default folder for now.

25 BY MS. MALIZIA:

Howard - Direct by Malizia

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1 Q. This is Government Exhibit IRS 4. Is this -- did you show
2 this tax return to the defendant?

3 A. Yes.

4 MS. MALIZIA: Pull up Government Exhibit IRS 5, Page 2.

5 BY MS. MALIZIA:

6 Q. Did you also show this form to the defendant?

7 A. Yes.

8 MS. MALIZIA: And Government Exhibit IRS 8, Page 2.

9 BY MS. MALIZIA:

10 Q. This is the fourth of those returns you showed to the
11 defendant?

12 A. Yes.

13 Q. Did you ask the defendant to identify the signature on each
14 of these returns?

15 A. Yes.

16 Q. How did he respond?

17 A. That they each appeared to be his signature.

18 Q. Did he say anything else about these four returns?

19 A. That he did not recall filing them.

20 Q. Did you ask the defendant whether he had received frivolous
21 filer letters from the IRS?

22 A. Yes.

23 Q. How did he respond?

24 A. That he had.

25 MS. MALIZIA: Can we pull up Government Exhibit IRS 21.

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1 BY MS. MALIZIA:

2 Q. Did you also ask the defendant about correspondence he had
3 sent to the IRS?

4 A. Yes.

5 Q. All right. This is Page 2 of Government Exhibit IRS 21. Did
6 you show -- did you show -- this is Page 1 of that -- Page 2 of
7 that exhibit. Did you show this to the defendant?

8 A. Yes.

9 Q. Did you ask him about the stamps and handwriting on this
10 form?

11 A. Yes.

12 Q. How did he respond?

13 A. That it was his handwriting.

14 Q. Did you -- if we can take a moment to address what's on the
15 screen.

16 Agent Howard, I think if you double click with your
17 finger at the bottom of the corner of the screen, we may be able
18 to clear this sort of splatter-paint effect. If you can try that
19 for me right now. Bottom left corner. Let me try this.

20 THE WITNESS: No, it's just making it worse.

21 MS. MALIZIA: It's a little distracting.

22 Here you go. It's whoever put it on the screen, you've
23 got to use that screen.

24 BY MS. MALIZIA:

25 Q. You said that the defendant admitted to receiving frivolous

Howard - Direct by Malizia

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1 filer letters from the IRS, is that right?

2 A. Yes.

3 Q. Did you show the defendant three frivolous filer
4 letters -- did you show the defendant copies of frivolous filer
5 letters that had been sent to him by the IRS?

6 A. Yes.

7 Q. And what did he say? Did he recognize them?

8 A. Yes.

9 MS. MALIZIA: If we could pull up Government Exhibit 11.

10 BY MS. MALIZIA:

11 Q. Displayed on your screen is Government Exhibit IRS 11. Is
12 this a copy of one of the letters you showed to the defendant?

13 A. Yes.

14 Q. Did you ask him about the address at the top of this letter?

15 A. Yes.

16 Q. How did he respond?

17 A. That he had purchased a home at that address for his wife in
18 approximately 2004 -- for his wife and children -- because she
19 had a disease that required her to be in a warmer climate.
20 However, Hakeem El Bey never lived at that address.

21 Q. Special Agent Howard, I'm going to show you on the Elmo
22 what's been marked and admitted as Defense Exhibit 1.

23 Did you show the defendant this document?

24 A. I believe that he showed it to me.

25 Q. Thank you.

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1 So the defendant showed this document to you during your
2 interview of the defendant?

3 A. That's correct.

4 Q. And what if anything did he say about it?

5 A. He asked why he would receive this letter, stating there was
6 an overpayment due to him, if something was wrong with what was
7 going on with him in having filed these tax returns and obtaining
8 the money and the refund checks.

9 Q. Did you say anything in response?

10 A. Yes. Special Agent Creen and I attempted to explain to him
11 that tax returns -- the IRS is a voluntary compliance tax system.
12 Taxpayers are expected to file timely, accurate returns. They
13 are signed under penalty of perjury. The IRS expects those
14 returns to be true and accurate, and they are processed as such
15 initially.

16 In this instance he had filed a Form 1041 trust return
17 claiming \$300,000 in withholding. The IRS believed that to be
18 true and accurate.

19 when the system, again, talked to itself essentially --
20 each tax year is on a different module, so to speak -- so when
21 that tax return was filed that this letter pertains to, the
22 system knew that fraudulent refunds had been issued.

23 So this had been applied to those periods because the
24 system believed that that withholding was true and accurate.

25 Q. And you explained this to the defendant?

1 A. Yes.

2 Q. During your interview of the defendant did you ask him
3 whether he filed personal returns?

4 A. Yes.

5 Q. How did he respond?

6 A. That he did file personal returns every year.

7 Q. Did you ask the defendant whether he spent the money he
8 received from the two \$300,000 Treasury checks?

9 A. Yes.

10 Q. How did he respond?

11 A. That he did spend it.

12 Q. Did he say how he spent it?

13 A. Yes. On vehicles, a home, and giving it to family.

14 MS. MALIZIA: If we could pull up Government Exhibit
15 Wells Fargo 10 A.

16 BY MS. MALIZIA:

17 Q. Displayed on your screen, Agent Howard, is Government Exhibit
18 Wells Fargo 10 A. Did you show the defendant a copy of this
19 check?

20 A. Yes.

21 Q. For the record, this is a check for \$35,780 made out to
22 Circle, is that correct?

23 A. Yes.

24 Q. What did the defendant say about this check?

25 A. It was for the purchase of a Buick LaCrosse.

Howard - Direct by Malizia

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1 MS. MALIZIA: Back out of this and go to Government
2 Exhibit wells Fargo 2, Page 53.

3 BY MS. MALIZIA:

4 Q. Did you show him a copy of a check for \$756.20?

5 A. Yes.

6 Q. And was this a check to Mecklenburg County?

7 A. Yes.

8 Q. And what did he say about this check?

9 A. It was for use tax on a vehicle he had purchased.

10 Q. Did you also show him a check for -- drawn on his account for
11 \$115,500?

12 A. Yes.

13 MS. MALIZIA: This would be Government Exhibit wells
14 Fargo 6 A, if you can find it.

15 BY MS. MALIZIA:

16 Q. Go to Page 2 of that exhibit. Displayed on your screen is
17 Government Exhibit Wells Fargo 6 A, Page 2. Is this a copy of a
18 check that you showed the defendant in the amount of \$115,500?

19 A. Yes, it is.

20 Q. Did you ask the defendant about this check?

21 A. Yes.

22 Q. What did he say?

23 A. It was for the purchase of the home in Calumet City on 439
24 Hoxie Avenue.

25 MS. MALIZIA: If we could pull up Government Exhibit

Howard - Direct by Malizia

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1 wells Fargo 8 A.

2 BY MS. MALIZIA:

3 Q. Displayed on your screen is what has already been admitted as
4 Government Exhibit wells Fargo 8 A. Did you show the defendant a
5 copy of this check?

6 A. Yes.

7 Q. This is a check for \$21,459 made out to Mancari's Chrysler
8 Jeep, is that correct?

9 A. Yes.

10 Q. And what did the defendant say about this check?

11 A. It was for the purchase of a Jeep.

12 MS. MALIZIA: Pull up one last check, Government Exhibit
13 wells Fargo 10 B.

14 BY MS. MALIZIA:

15 Q. Did you show the defendant a copy of this check?

16 A. Yes.

17 Q. To be clear, this is a check for \$36,149 made out to
18 Mancari's, is that right?

19 A. That's correct.

20 Q. What did the defendant say about this check?

21 A. This went along with the prior check that I was just shown.
22 He traded in the vehicle he had purchased for a different vehicle
23 that was four-wheel drive. And this was the additional payment
24 for that vehicle.

25 Q. In addition to showing the defendant these checks, did you

1 also ask him about certain large dollar items from his wells
2 Fargo bank account ending 5730?.

3 A. Yes, I did.

4 Q. Was one of these items a \$27,000 payment in January of 2010?

5 A. Yes, it was.

6 Q. Was another item a \$27,007 payment in February of 2010?

7 A. Yes.

8 Q. What did the defendant say about these items?

9 A. They were for the purchases of two Hyundai vehicles, a Sonata
10 and a Genesis.

11 MS. MALIZIA: We have no further questions for this
12 witness, your Honor.

13 THE COURT: Thank you.

14 Mr. El Bey, do you wish to cross-examine Mr. Howard?

15 THE DEFENDANT: Yes.

16 CROSS-EXAMINATION

17 BY THE DEFENDANT:

18 Q. What's your name again?

19 A. Legally, Stephen Howard. I go by Greg, my middle name.

20 Q. Okay. Now, I remember talking to you when I came to your
21 office.

22 THE DEFENDANT: He is under oath, right? You did swear
23 him in?

24 THE COURT: Excuse me?

25 THE DEFENDANT: He did swear on The Bible?

1 THE COURT: Oh, yeah. Yeah.

2 THE DEFENDANT: Okay.

3 BY THE DEFENDANT:

4 Q. Because when I talked to you all, I did reserve my rights.
5 But all of these exhibits that she showed, you and me never had
6 that discussion. I never showed you anything.

7 Only thing you had when me and you talked was the
8 1099 OID, which you asked me about. But the most of the part you
9 asked me about different people.

10 You have never talked with me about anything but other
11 people.

12 You asked me did I know about this person. I said no, I
13 did not.

14 You asked me how did I know the process.

15 I told you I learned the process through Winston Stroud.

16 And then we talked about my personal life. I told you I
17 was about to have a knee replacement, that was why I was off my
18 job.

19 And those are the only things -- and you under oath --
20 and these are the only things that me and you talked about.

21 So now, you never showed me any of these exhibits and
22 you never asked me anything like that. And you under oath, and I
23 think that's wrong of you to come in and tell the people that.

24 MS. MALIZIA: Objection, your Honor. This is testimony.
25 Narrative.

1 THE DEFENDANT: Judge, I have to get that out because he
2 never asked me any of that. You under oath.

3 THE COURT: But, Mr. El Bey --

4 THE DEFENDANT: Yes, sir.

5 THE COURT: -- when the government's case is over and
6 it's your case --

7 THE DEFENDANT: Okay.

8 THE COURT: -- you may testify, of course.

9 But when you're cross-examining the witness, you have
10 to -- you can just ask questions. You can't --

11 THE DEFENDANT: Okay. Okay. And that's good.

12 THE COURT: So you can ask him didn't you say this or
13 didn't you say that.

14 THE DEFENDANT: Oh, okay. I'm sorry.

15 BY THE DEFENDANT:

16 Q. So if I asked you, if you said all these things to me and you
17 told me that I had been committing fraud, why didn't you arrest
18 me?

19 A. You had not been indicted at that time. The investigation
20 was still ongoing.

21 Q. So let me ask you a question. When Internal Revenue --
22 actually, I started doing the trust in 2006, is that correct?

23 A. I didn't understand the question. Can you repeat it?

24 Q. When I started doing my trust, I did my trust, I started in
25 2006, is that correct?

Howard - Cross by The Defendant

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1 A. I believe that was the first year a tax return was filed for
2 the trust.

3 Q. So you going to wait six years to indict me? At that time in
4 2012 it would have been six years?

5 MS. MALIZIA: Objection, your Honor.

6 THE COURT: Well, no, he is just asking why --

7 THE DEFENDANT: I'm asking a question.

8 THE COURT: -- why the government waited to indict him.

9 THE DEFENDANT: That's right. I just want to know. If
10 it is true --

11 MR. MALIZIA: Your Honor --

12 THE DEFENDANT: -- then let me know.

13 BY THE DEFENDANT:

14 Q. So now, a question. So if you had all this on me and I
15 showed you all of that, and, you know, because when I -- you
16 called -- actually you came to my house, you put a card in my
17 door and I said wow.

18 So when I saw the card I called you.

19 And you said: why don't you just come in and talk to
20 me?

21 I said: I don't have no problem with that.

22 So actually, it was my aunt's funeral -- I left her
23 funeral, like I told you, I left my aunt's funeral.

24 MS. MALIZIA: Your Honor, objection. Sidebar.

25 THE COURT: But again, Mr. El Bey, you must ask

Howard - Cross by The Defendant

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1 questions.

2 THE DEFENDANT: Well, that's what I was fittin' to do.
3 Okay. I never get to say what I want to say. I get cut off what
4 I'm saying.

5 BY THE DEFENDANT:

6 Q. But anyway, so if the Internal Revenue Service knew that they
7 had sent me \$600,000, and that I had put it in an account -- and
8 I'm talking to you about all this, all this illegal activity that
9 you're saying I'm doing, like buying cars for my family -- and
10 you had one thing right: I did buy a house for my wife because
11 she was sick, but I did live there, and that was a wrong too.

12 That was -- so what I'm saying to you is this: I
13 bought -- you know, when I talked to you you -- we talked like
14 men, and you asked me about the 1099 OID, the form 56, you asked
15 me did I sign those.

16 Actually I had brought you a case with all kind of legal
17 documents on it, and you had acknowledged that and you said:

18 Mr. El Bey, I don't have a problem. And these were your
19 exact words.

20 MS. MALIZIA: Objection, your Honor. The witness is
21 testifying.

22 THE DEFENDANT: I'm not testifying.

23 MS. MALIZIA: If he wants to ask a question --

24 MR. HOTALING: Where is the question?

25 THE DEFENDANT: I'm fittin' ready to ask him a question,

Howard - Cross by The Defendant

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1 if I could talk. I can't say two words.

2 THE COURT: See, the problem was you were telling him
3 the answer.

4 THE DEFENDANT: No, I was going to ask him.

5 THE COURT: Well, what is the question?

6 BY THE DEFENDANT:

7 Q. The question was: Do you remember me talking about my knee
8 replacement?

9 A. I believe -- I believe so, yes.

10 Q. Oh, you believe so?

11 A. I don't recall specifically if it was a knee problem or I
12 don't -- I didn't know if it was a back problem. Or I didn't
13 recall.

14 Q. Do you recall what you told me at the beginning of that
15 conversation?

16 A. About your knee?

17 Q. Not just my knee. As we was talking, I asked you -- I said I
18 just wanted to ask you a question, why did you all call me in.

19 A. I don't recall you asking me that. But we called you in
20 because we wanted to speak with you about the filing of these
21 fraudulent trust returns.

22 Q. Okay. So a question, but she said I can't -- I just got to
23 ask questions.

24 Okay. Well, I will wait until I make my presentment
25 then. I'm through with them questions right now, because I can't

1 say what I want to say so --

2 THE COURT: You are free to ask him questions.

3 THE DEFENDANT: Well, Judge, any question I ask, because
4 I'm limited, I only get to throw one chip in and that's it.
5 Everybody else get to throw a hundred chips.

6 THE COURT: But is there any question that you want to
7 ask him that he hasn't answered?

8 THE DEFENDANT: Yes.

9 BY THE DEFENDANT:

10 Q. Has everything that you said in this court been true?

11 A. Yes.

12 Q. Under oath?

13 A. Yes.

14 THE DEFENDANT: Okay. Judge, I'm done.

15 THE COURT: Okay. Thank you, Mr. El Bey.

16 MS. MALIZIA: We have no redirect, your Honor. May the
17 witness be excused?

18 THE COURT: So is that the close of the government's
19 case?

20 MS. MALIZIA: No, your Honor. If we could have a
21 moment?

22 But may the witness be excused?

23 THE COURT: Yes. Thank you, Mr. Howard.

24 (Witness excused.)

25 THE COURT: Do you want to have a sidebar or do you want

1 to just talk to me?

2 MR. HOTALING: Judge, if we could have just a quick
3 sidebar?

4 THE COURT: Yeah, sure.

5 (Proceedings heard at sidebar:)

6 MS. MALIZIA: Your Honor, we would move to admit
7 Government Exhibit Summary Chart 1 into evidence. I believe we
8 neglected to do so yesterday. But we believe we have laid a
9 sufficient foundation to admit it as evidence.

10 MR. HOTALING: And that's the blowup chart that we went
11 through, the flow chart that we talked about that Agent Bodner
12 testified in detail about that summarized the purchases of the
13 cars and summarized the purchase of the house, that we have had a
14 conversation about.

15 THE COURT: It was my suggestion.

16 MR. HOTALING: And so as a following up to that, we
17 would ask that it be admitted into evidence as a 1006 summary.

18 THE COURT: I think that's fine. It is admitted as a
19 1006 summary.

20 MS. MALIZIA: All right.

21 THE DEFENDANT: A 1006 summary?

22 MR. HOTALING: I'm sorry. I shouldn't use the legal
23 jargon. So I apologize, Judge, for the use of the legal jargon.

24 THE DEFENDANT: They talk over my head all the time.

25 MR. HOTALING: No, I sorry.

1 THE COURT: That's the way we talk.

2 MR. HOTALING: And I don't mean to do so.

3 THE COURT: They don't talk English.

4 MR. HOTALING: It's horrible. We are lawyers. You know
5 how it is.

6 It's a summary chart that we move into evidence, like we
7 have moved the other documents into evidence. So the documents,
8 the records that go into the chart itself would also be admitted
9 into evidence as a summary of all of the different things that we
10 have accumulated.

11 THE DEFENDANT: The summary chart that you spent four
12 hours on yesterday and you didn't admit. Put everybody to sleep.

13 MS. MALIZIA: Your Honor --

14 THE DEFENDANT: I'm just saying, your Honor --

15 MS. MALIZIA: Your Honor, if the defendant has an
16 objection, we can recall --

17 THE DEFENDANT: I have an objection.

18 MS. MALIZIA: We can recall the agent or you could admit
19 it over his objection.

20 THE COURT: Well, I think I will admit it.

21 (Government Exhibit Summary Chart 1 received in evidence.)

22 MR. HOTALING: And then if we -- your Honor, if we could
23 just have, the two of us, have a very brief moment, we might be
24 in a position --

25 MS. MALIZIA: To rest.

1 MR. HOTALING: -- to rest.

2 So if we could just maybe have a minute, just so we can
3 sit at the table and deal with it.

4 THE COURT: Yes.

5 MR. HOTALING: Thank you, Judge.

6 MS. MALIZIA: Thank you.

7 THE DEFENDANT: You know what, Judge, okay, I want to
8 say this because I already see what's going on now.

9 So, you know, what I'm saying to you is this: You know,
10 this is -- again, this is not an even playing field and it's
11 not -- you got these -- these levels and you got these boxes in
12 here. And they haven't been removed so the court would be even.

13 And I think that you are biased to these, so you're not
14 giving me a fair chance. I don't even have a chance. Everything
15 I say, it's objected, or you say it's irrelevant.

16 THE COURT: No, but --

17 THE DEFENDANT: And so I can't get my point across to
18 anyone. So I'm sitting here looking stupid.

19 THE COURT: Mr. El Bey, no, no, you are not stupid.
20 Your problem is you are handicapped because you don't have a
21 lawyer.

22 THE DEFENDANT: I don't have to be a lawyer.

23 THE COURT: You can't do it -- you have a right to
24 defend yourself without a lawyer. That's fine. But --

25 THE DEFENDANT: You have admitted everything they do.

1 You don't give me any chance.

2 THE COURT: But the problem is because you don't have a
3 lawyer, you don't know what is admissible and what isn't. I have
4 to rule on the basis of the law. I am -- my hands are tied.

5 THE DEFENDANT: Okay. I understand.

6 THE COURT: So it's a rule. I didn't make it up.

7 THE DEFENDANT: You are punishing me for not being a
8 lawyer. I got it.

9 THE COURT: When you are -- when you are cross-examining
10 a witness you can only ask questions. That's the rule.

11 Now, because you're not a lawyer it's difficult for you
12 to abide by these rules. I understand that. I'm trying to give
13 you every opportunity, but I do have to enforce these rules.

14 THE DEFENDANT: Okay.

15 THE COURT: So I'm sorry.

16 MR. HOTALING: Thank you, Judge. If we could just have
17 a moment.

18 (Pause.)

19 THE DEFENDANT: Okay. What I want to say is, when we
20 first got here, when I admitted my first exhibit she said: why
21 wasn't this shown to me before?

22 And then you got right on here and then you put my
23 exhibit forward and you knew that was going to be my first
24 exhibit.

25 So is that fair? Because the first thing she said was:

1 why haven't we saw this? And she was sitting around, I know you
2 heard it.

3 what I'm saying to you is this --

4 THE COURT: I'm going to --

5 THE DEFENDANT: My exhibit that I was going to show,
6 they displayed it before I could and you knew it was going to be
7 my exhibit.

8 And she never had the exhibit because she admitted it
9 when I gave to it her. That's why we had to go over there and
10 study and object to it.

11 THE COURT: But what is the problem with it?

12 THE DEFENDANT: The problem is she admitted it before I
13 did.

14 THE COURT: But what difference is it?

15 THE DEFENDANT: Because I was -- okay, never mind.

16 MS. MALIZIA: Your Honor, I --

17 THE COURT: I mean, I'm just asking you.

18 THE DEFENDANT: Well, come on, Judge. You just put
19 yourself in my place. How would you feel?

20 THE COURT: I don't understand.

21 THE DEFENDANT: I know. I know.

22 THE COURT: It was your document and it is admitted.
23 was admitted.

24 THE DEFENDANT: You knew she didn't have it. They
25 didn't get it until this morning when I gave it to them. So now

1 they are going to display it before I can display it and refer
2 the jury from the real truth, and you know that. So --

3 MR. HOTALING: You agreed to that procedure.

4 (Defendant leaves sidebar.)

5 MS. MALIZIA: Your Honor, I think -- I'm not going to
6 speak outside of the presence of the defendant.

7 THE COURT: All right.

8 (Proceedings heard in open court:)

9 THE COURT: I apologize for these interruptions, Ladies
10 and gentlemen of the jury. It's inevitable trial process.

11 So where are we, Ms. Malizia?

12 MS. MALIZIA: Your Honor, at this time the government
13 rests.

14 THE COURT: Okay. Thank you.

15 So, Mr. El Bey, it's your turn.

16 THE DEFENDANT: Yes.

17 THE COURT: Let me just remind you, if you have
18 witnesses or a witness that you want to question, again, as with
19 the cross-examination, you could just ask questions to the
20 witness. You can't --

21 THE DEFENDANT: Yes, I will.

22 THE COURT: If you decide you want to testify yourself,
23 then you'll be like the other witnesses in the witness box and
24 then you will be able to talk. You will be the question and
25 answer. So --

1 THE DEFENDANT: Okay. May I approach the jury box and
2 give them a copy?

3 THE COURT: Sure. A copy of what, I should ask?

4 THE DEFENDANT: Of what I gave you.

5 THE COURT: The one we have discussed?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay.

8 MR. HOTALING: Okay. And again --

9 MS. MALIZIA: For the record, your Honor, I believe this
10 is Defense Exhibit 1.

11 THE COURT: What's --

12 THE DEFENDANT: It's not 1 anymore.

13 MS. MALIZIA: Your Honor, could we see copy of what the
14 defendant is tendering to the jury?

15 THE COURT: Yes.

16 THE DEFENDANT: I gave them a copy.

17 MS. MALIZIA: I believe this is what has previously been
18 admitted as Defense Exhibit 1 for the record.

19 THE COURT: Yes. Ms. Malizia just wants to verify this.

20 THE DEFENDANT: I gave them a copy, Judge. I only had
21 enough for the jury.

22 THE COURT: Well, Ms. Malizia, why don't you look at one
23 of the juror's copies.

24 MS. MALIZIA: Thank you.

25 Your Honor, the juror just handed me what appears to be

1 an identical copy of what has been admitted into evidence as
2 Defense Exhibit 1.

3 THE COURT: Okay. Then...

4 THE DEFENDANT: Okay. Again, your Honor, let me say
5 this.

6 THE COURT: Okay. Well, you want to stand in front of
7 the podium.

8 THE DEFENDANT: I came to you, I tried to be a
9 completely honest man. I came to you with my document this
10 morning, and they didn't have the document.

11 So now they took the document and showed it, and it was
12 supposed to be my exhibit first. So now she gets up and tells
13 them that it's a document already been admitted.

14 But they didn't have it this morning until I gave to it
15 them, so now they have to take it and use it against me. But
16 I'll continue anyway.

17 MS. MALIZIA: Your Honor, perhaps this would be more
18 appropriate at sidebar, your Honor.

19 THE DEFENDANT: This is my title to the car.

20 THE COURT: Yeah. Now Ms. Malizia is right. An
21 objection to a procedure, that's not -- that has to be decided by
22 the judge rather than by the jury. So if you want to -- if you
23 want to --

24 THE DEFENDANT: You say I can call my witness?

25 MR. HOTALING: No.

1 THE COURT: Well, do you have anything further to say
2 about this document?

3 THE DEFENDANT: Yes, I do. You want me to say it before
4 I call my witness?

5 THE COURT: You can do it in any order you want.

6 THE DEFENDANT: Okay.

7 THE COURT: But just let me say to the ladies and
8 gentlemen of the jury, this question that Mr. El Bey just raised
9 about -- I don't know -- the order in which it was given, it's
10 not germane.

11 THE DEFENDANT: Jurors, jurors, I just want to show you
12 a copy of what the Internal Revenue Service sent me.

13 THE COURT: Wait, wait. There is a problem, Mr. El Bey.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If you are going to be testifying you have
16 to be sworn and sit in the jury box.

17 THE DEFENDANT: I'm not testifying.

18 THE COURT: Well, but are you talking to the jury about?
19 This is also not closing argument where you'll be able to
20 summarize your case to the jury.

21 what you can do now --

22 THE DEFENDANT: Can I call my witness?

23 THE COURT: -- you can call a witness and interview a
24 witness and you testify yourself and that's it.

25 THE DEFENDANT: Okay. I would like to call my witness,

1 your Honor.

2 THE COURT: Okay.

3 THE DEFENDANT: Zakar Ali E1 Bey.

4 (witness affirmed.)

5 THE COURT: Thank you. Please be seated.

6 ZAKAR ALI EL BEY, DEFENDANT'S WITNESS, AFFIRMED

7 DIRECT EXAMINATION

8 BY THE DEFENDANT:

9 Q. Mr. E1 Bey, have you ever heard of a trust?

10 A. Yes, sir.

11 COURT REPORTER: Could I have your name?

12 THE WITNESS: My name is Zakar, Z-A-K-A-R, Ali, A-L-I,
13 E-L, E1.

14 I only use Bey in reference to what say -- what's on my
15 birth certificate. For it is a Moorish family name. But I don't
16 want the government to intervene with my personal affairs.

17 So I only use Bey when it's referring to family affairs.

18 So it's just Zakar Ali E1.

19 BY THE DEFENDANT:

20 Q. Again, I'm going to ask you a question: Do you know anything
21 about the 1041 trust?

22 A. Yes, I do.

23 Q. And do you have one?

24 A. I've filled out for one in previous years. I didn't have all
25 the correct procedures to go through with it so I kind of left it

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1 alone.

2 Q. Can anyone fill one out?

3 A. Anyone that has a Social Security number. Because the number
4 on the back of the card is the number of the trust.

5 MS. MALIZIA: Your Honor, we are going to object to this
6 line of testimony.

7 THE COURT: Why?

8 MS. MALIZIA: He isn't --

9 THE COURT: Do you want to discuss the ground for your
10 objection? All right. We will have a sidebar.

11 We will have a sidebar.

12 (Proceedings heard at sidebar:)

13 MS. MALIZIA: Your Honor, if Mr. El Bey is going to
14 offer this witness as some kind of expert on trusts, or even as
15 somebody with knowledge of trusts, we need to know something
16 about his background to qualify him to testify about them.

17 He just stated that -- he is stating requirements for
18 filing a trust. I'm not -- it's not entirely clear to me that he
19 is qualified to do so.

20 THE DEFENDANT: You will get a chance to cross-examine
21 him so you can ask him. That problem is solved.

22 MS. MALIZIA: There is also an issue of relevance here
23 but we will wait.

24 THE DEFENDANT: The case is over a trust so it is
25 relevant.

1 MR. HOTALING: I mean, obviously, Judge, there are
2 issues of qualifications, so --

3 THE COURT: Well --

4 MR. HOTALING: One option, Judge, is to actually voir
5 dire this witness outside the presence of the jury.

6 THE COURT: If Mr. El Bey learned about trusts from this
7 man, I think that's germane.

8 MS. MALIZIA: I'm not -- it's not entirely clear to me
9 that this man is qualified to talk about the requirements for a
10 simple trust.

11 THE COURT: Yes. But what if he gave misleading
12 information to Mr. El Bey?

13 THE DEFENDANT: Or who said your witnesses were
14 qualified to say what they say?

15 MS. MALIZIA: We qualified them on the record.

16 THE DEFENDANT: Well, okay.

17 MS. MALIZIA: That's why.

18 THE DEFENDANT: I'm qualifying him on my record now.

19 THE COURT: I'm going to overrule the objection.

20 (Proceedings heard in open court:)

21 THE COURT: There is an objection. I overruled it. I'm
22 going to permit the question and answer to stand.

23 BY THE DEFENDANT:

24 Q. The question was: Could anyone file a 1041 trust?

25 A. Anyone that finds out that they have a Social Security

1 number. In the back of the card there is a red letter. The red
2 letter tells you one of 12 banks that's in the United States held
3 by the Federal Reserve, and the eight-digit number is the account
4 that's attached to the person on the Social Security card and
5 their birth certificate. For they are the human resource.

6 Q. Do all American citizens -- I won't say that. I won't say
7 that. I'm going to get in trouble.

8 So if -- let's just say if any American citizen decide
9 to fill out a 1041 and asked for some funds and they got it and
10 they didn't put any money into it, how is that possible?

11 A. Because the number on the front of the card is the entity
12 that was created off the birth certificate.

13 The number on the back of the card is the bank, the
14 Federal Reserve Bank that holds that name in trust since its
15 creation on the birth certificate.

16 So again, I could speak to you about the bankruptcy, but
17 you didn't ask that question so I'll leave it alone.

18 Q. So I got one question for you. Do you have a dollar bill?

19 A. I don't have one on me. But in the left-hand corner of the
20 dollar bill, on the side of George Washington, you will see the
21 number, a letter for the Federal Reserve Bank, and then it has it
22 in the circle enclosed, the Federal Reserve Bank.

23 And, once again, the account number of whose ever Social
24 Security number is on the back number, for all of the people are
25 resources. We are the chattel property of the corporation.

1 Q. Okay. So let me ask you a question. If the Internal Revenue
2 Service sent you a document saying that you overpaid anything, is
3 that saying that you owe them or they owe you?

4 A. It can work both ways. But if you -- it can be discharged.
5 Because, once again, as of the bankruptcy of the United States,
6 the only money is the people.

7 Q. Okay. So --

8 MS. MALIZIA: Your Honor, I'm sorry. We have to object
9 to that last response.

10 THE COURT: All right. Well, we will have another
11 sidebar. Sorry.

12 (Proceedings heard at sidebar:)

13 THE COURT: Look, when you make your rebuttal you can
14 correct any mistakes that he made. I don't want to stifle him so
15 he doesn't have any defense at all. All right?

16 MS. MALIZIA: All right.

17 THE COURT: The one document --

18 MS. MALIZIA: If you are willing to let in testimony on
19 this sovereign citizen nonsense --

20 THE COURT: I didn't say I was letting it in. On
21 rebuttal -- on rebuttal --

22 MS. MALIZIA: That's exactly what he just testified to.

23 THE COURT: Look. On rebuttal if you show, you know,
24 it's errors, it's irrelevant, it's not qualified, then I will
25 exclude that.

1 Do you really think the jury is going to be dazzled by
2 this evidence?

3 MS. MALIZIA: Your Honor, we are concerned that he is
4 dangerously close, if he has not already violated your order on
5 this sovereign citizen defense, would put it charitably. But
6 certainly, the testimony relates to that subject matter.

7 THE COURT: Well, if you want to object to the sovereign
8 citizen --

9 MS. MALIZIA: That is what we are objecting to right
10 now.

11 THE COURT: Well, you didn't say that. All right?

12 THE DEFENDANT: This has nothing to do with the
13 sovereign citizen.

14 MR. HOTALING: He is just talking about the bankruptcy
15 of the United States, Judge. Those were the last three words
16 that came out of his mouth, that the United States is bankrupt.
17 That goes to the whole core and crux of what this whole
18 defense --

19 THE COURT: I didn't understand that that was your
20 objection.

21 MS. MALIZIA: That is what we are objecting to.

22 THE COURT: Well, you didn't say it.

23 MS. MALIZIA: I'm saying it right now.

24 THE COURT: Well --

25 THE DEFENDANT: Judge, I asked the man a question.

1 THE COURT: You can't -- I know. But look, you can't
2 get into all this stuff about --

3 THE DEFENDANT: I'm not getting into anything --

4 THE COURT: -- about bankruptcy of the United States.

5 MR. HOTALING: That's what he just said.

6 THE DEFENDANT: That's not me.

7 MR. HOTALING: The question is --

8 THE DEFENDANT: What I'm saying is you all haven't given
9 me an opportunity to do anything. You might as well just go on
10 and convict me if you are doing to do what you're doing. I don't
11 know why we been doing this here because you're not giving me a
12 fair chance. You know, everything I do, if they say it it goes.

13 THE COURT: But if he gives answers -- if he starts
14 talking about the bankruptcy and the sovereign citizen --

15 THE DEFENDANT: Judge, just tell him he can't say that
16 then. I don't think we got to keep coming over having these
17 meetings. That's not me saying it. I just keep saying --

18 THE COURT: You can't allow a witness to talk about the
19 government being bankrupt and he being a sovereign citizen or
20 something.

21 THE DEFENDANT: Okay. I don't know if he said sovereign
22 citizen or not. But I'm just saying, tell him he can't say it.
23 why are we keep having these meetings? You making me come over
24 here. We keep coming over here.

25 THE COURT: Okay. But I want -- all right. I want the

1 -- if you make an objection, I want you to articulate the
2 objection, tell me what the objection is, and I'll rule on it.

3 MS. MALIZIA: And you would like us to do that in front
4 of the jury?

5 THE COURT: Yes.

6 MS. MALIZIA: All right.

7 THE COURT: Otherwise we are going to have a sidebar
8 every five minutes.

9 THE DEFENDANT: Yeah. That's what I'm saying.

10 MS. MALIZIA: I think to avoid potential prejudice to
11 the defendant, that would actually be my suggestion. But if you
12 want us to discuss this in front of the jury, we are happy to
13 accommodate the Court.

14 THE COURT: Well, what do you think?

15 LAW CLERK: I think the sidebars are probably in the
16 defendant's interest to the extent that the discussion is of
17 either the relevance of the bankruptcy or why the U.S. is --

18 MR. HOTALING: My guess is we are going to see more
19 answers -- my guess is we are going to see more answers along
20 this line that we have just now seen.

21 THE DEFENDANT: Well, Judge, you can't do any guessing.

22 MR. HOTALING: Well, wait, let me finish.

23 THE DEFENDANT: I didn't --

24 MR. HOTALING: We have already heard about the Federal
25 Reserve and that money is being held in trust by the United

1 States by the Federal Reserve, the fact that the government is
2 bankrupt.

3 This is all along this path, Judge, that you've
4 excluded.

5 THE COURT: Okay. Now I understand.

6 MR. HOTALING: And that's where he has gone.

7 THE COURT: So, look, Mr. El Bey, you may --

8 THE DEFENDANT: All they got to do is ask.

9 THE COURT: Look, you may ask -- you may ask him
10 perfectly proper questions. But if he gives responses which are
11 improper, I can't let him testify.

12 THE DEFENDANT: Okay. And I'm good with that.

13 THE COURT: Okay.

14 MR. HOTALING: And so procedurally, Judge, would you
15 like -- how would you want us to do this moving forward?

16 THE COURT: We will do it with the sidebars if there are
17 further objections. Just when you make your objection, give me a
18 chance to do something, maybe without having to hear the ground
19 of the objection.

20 MR. HOTALING: I think we will make every effort to do
21 so, Judge. Thank you.

22 (Proceedings heard in open court:)

23 THE COURT: Okay. Sorry, ladies and gentlemen, with the
24 constant interruptions.

25 So, Mr. El Bey, do you want to continue?

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1 THE DEFENDANT: Yes, sir.

2 BY THE DEFENDANT:

3 Q. Mr. E1, in your experience with the Internal Revenue Service,
4 would you say when you owe money to the Internal Revenue Service
5 that they would notify you first, and if you don't pay they come
6 get it in any way, form or fashion? In your opinion?

7 A. From my experience is when you owe the IRS any kind of money,
8 they will come at your wages, they will garnish your check, they
9 will go into your account and take whatever they said that you
10 owe.

11 Q. And so on that note, let me ask you: Have you ever known
12 them to wait five or six years before they come get the money?
13 Or would they just go and get it after a certain period of time?

14 A. Well, being that they are a collection agency for the U.S.
15 Treasury Department, they don't have to wait. They can go into
16 your money wherever it's at.

17 Q. Okay. So do the Internal Revenue Service also collect for
18 child support?

19 THE COURT: Collect for what? I didn't hear you.

20 BY THE DEFENDANT:

21 Q. Do they collect for child support?

22 A. They are responsible for any collection of any U.S. currency.

23 THE COURT: Let me just remind Mr. E1 Bey, and also
24 remind the witness, that you are testifying from your personal
25 experience, right?

1 THE WITNESS: Right.

2 THE COURT: Because he is --

3 THE DEFENDANT: Judge, I'm just asking the question.

4 THE COURT: -- he is not qualified as an expert on the
5 operation of the Internal Revenue Service. But his own
6 experiences he can tell about.

7 THE DEFENDANT: Yes, sir. Yes. We haven't had any
8 experts here since the trial began, so I'm just saying, like they
9 asked them, I'm asking too. So okay.

10 THE COURT: I mean, the witnesses who testified for the
11 government, they were testifying about things they had personal
12 experience with knowledge of in their jobs. Or Mr. Howard, he
13 was reporting on his conversations with you.

14 THE DEFENDANT: Okay.

15 THE COURT: But without special qualifications a witness
16 can't be asked about the operation of a government agency that he
17 is not employed by.

18 THE DEFENDANT: Okay.

19 THE COURT: Just about his own experiences with that
20 agency.

21 BY THE DEFENDANT:

22 Q. Okay. Let me ask you about an experience that you had. Did
23 you ever work for the postal service?

24 A. Yes, I did.

25 Q. So if I send you some mail through the postal service and I

1 did not -- let's just say the postal service did not cancel the
2 stamp, what reference would there be for you, to you?

3 A. From my experience, just as a regular citizen, the United --
4 the UPU gets involved, because the postal service is an
5 international business and everyone must receive mail.

6 If the stamp is not cancelled, then they can call mail
7 fraud on anybody that actually circulated the mail without
8 cancelling the stamp.

9 Q. Okay. I got to be careful what I say. Sometimes I don't get
10 the proper words. If you just bear with me a minute.

11 Getting back to the 1041s, is the 1041 different from
12 the 1040 as far as filing taxes?

13 A. The 1040 to my knowledge is what we use as our personal
14 income. Because, once again, we all know that we're property or
15 corporations.

16 The 1041 is the trust. You can pay or receive from the
17 corporation, meaning the job that you have actually worked by
18 that taxes you have paid. Or if you obtained the knowledge and
19 found out about the trust, then you can also collect on the
20 trust.

21 But, once again, you have to obtain that knowledge.
22 That's not something you don't want to go out there and jump
23 into.

24 You want to find out -- that's why I left it alone. I
25 didn't have enough knowledge so I didn't go forth with it.

1 Q. Okay. That's good.

2 So have everything that I've asked you since you took an
3 oath to swear to tell the truth, has it been truthful?

4 A. Everything that I personally experienced and what I have read
5 by the government manuals and books, yes.

6 Q. No, I'm talking about everything I have asked you here today.

7 A. And I've answered to, yes. I'm not going off of my feeling.
8 I'm going off of what I've seen and what I've experienced.

9 THE DEFENDANT: Okay. Okay. I'm going to retire and
10 give it to the prosecution.

11 THE COURT: Thank you, Mr. El Bey.

12 Do you wish to cross-examine this witness, Ms. Malizia?

13 MS. MALIZIA: I have just a few questions, your Honor.

14 CROSS-EXAMINATION

15 BY MS. MALIZIA:

16 Q. What was -- your last name was Mr. El? Mr. --

17 A. Zakar Ali El. I only use Bey on the birth certificate.

18 Q. Mr. El, have you ever worked for the IRS?

19 A. No, I haven't but --

20 Q. Have you ever -- have you ever worked for a financial
21 institution?

22 A. No, but they have books out.

23 Q. Mr. El --

24 A. No, ma'am. No, I haven't.

25 Q. -- have you ever worked for the Social Security

1 Administration?

2 A. No, I haven't.

3 Q. Have you ever worked for the United States Department of
4 Justice?

5 A. No, ma'am.

6 Q. Have you ever worked for any federal law enforcement agency?

7 A. No.

8 MS. MALIZIA: I have no further questions.

9 THE COURT: Thank you.

10 THE DEFENDANT: I do have one more question.

11 THE COURT: Do you have any redirect --

12 THE DEFENDANT: Yes, I have one question.

13 THE COURT: -- Mr. El Bey?

14 REDIRECT EXAMINATION

15 BY THE DEFENDANT:

16 Q. Have you ever worked for any federal agency?

17 A. Yes. I was in the military.

18 Q. Any other federal agency?

19 A. None other than the post office and the military, no.

20 THE DEFENDANT: Okay. That's all I wanted to know.

21 THE COURT: Thank you. Any recross?

22 MS. MALIZIA: No recross, your Honor.

23 THE COURT: Okay. Thank you very much, Mr. El. You are
24 excused.

25 (witness excused.)

1 THE COURT: Mr. El Bey, do you have any other witnesses
2 you'd like to call, or would you like to testify, or do you have
3 additional exhibits or anything?

4 THE DEFENDANT: Well, you have my other exhibits that
5 you said wouldn't be admissible.

6 THE COURT: Right. Well, I have -- yeah, we have
7 the --

8 THE DEFENDANT: So, no. I -- Judge, I have to say what
9 I have to say. Because I think this is very important.

10 THE COURT: Well, do you want to make a statement?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Now, remember, this is not closing argument.

13 THE DEFENDANT: No, no, no. I'm not -- I just want to
14 make a statement.

15 MR. HOTALING: Sidebar.

16 MS. MALIZIA: Your Honor, sidebar, please.

17 THE DEFENDANT: No, I don't need no sidebar. I just
18 want to stand up and talk.

19 THE COURT: I'm sorry. We have to have a sidebar.

20 THE DEFENDANT: Okay, then don't worry about it. Don't
21 even worry about it.

22 No. Don't worry about it. I just wait until I do what
23 I have to do.

24 (Proceedings heard at sidebar:)

25 THE COURT: So the problem is that we have to know what

1 statement you want to make, because I have to decide whether it's
2 proper.

3 So if it's closing argument -- in other words, when you
4 say, summarize the case to the jury, which you'll have a chance
5 to do, that's fine.

6 THE DEFENDANT: Okay.

7 THE COURT: But virtually any other statement would just
8 not be proper.

9 THE DEFENDANT: Okay. I wasn't going to make a
10 statement that was going to be a problem, but I do want to say
11 something to you.

12 THE COURT: Okay.

13 THE DEFENDANT: I think it's very important.

14 I came here in good faith. And again, I presented my
15 exhibit that they did not have. And you allowed them to show my
16 exhibit before I did.

17 So, you know, that is really unfair.

18 And, you know, I think I'm going to have to ask the
19 Court to recuse you, Judge, because you're not being fair.

20 I don't have a chance. You're not giving me a fair
21 chance to do anything. You give them anything they want, and I
22 ask you for anything, it's that: You don't -- you're not an
23 attorney, and that's all you say.

24 THE COURT: The exhibit -- that exhibit was in the
25 record, wasn't it?

1 MS. MALIZIA: Your Honor, I believe we addressed this
2 before the Court today twice.

3 It was admitted into evidence. And we -- as we
4 explained to the Court and to the defendant, we could, because it
5 was admitted, we planned to use it in our case in chief with our
6 agent.

7 If the Court did not wish to admit it at that time or
8 the defendant objected to that, we could recall our agent in
9 rebuttal, at which the time we could offer it in rebuttal.

10 THE DEFENDANT: Judge, when I gave you the document
11 first thing he did was: Oh, no, no.

12 MR. HOTALING: That's not true.

13 THE DEFENDANT: Yes, you did. You said: We didn't have
14 this. Why wasn't we given this.

15 That's the first thing you said, was why wasn't we given
16 this. And then you turn right around and they use it before, you
17 know -- and you knew it was going to be my first exhibit.

18 So you, as a judge, shouldn't have allowed them to do
19 that. You asked me to present my exhibits, you turned down my
20 envelopes. So the only exhibit I had to present, you let them do
21 it before I did so --

22 THE COURT: I understand your concern.

23 But the government's case had not ended. This was a
24 document in the record. They were entitled to use it.

25 THE DEFENDANT: Yeah, but don't call it my Exhibit 1 if

1 you are going to let them use it, because it's not my exhibit.

2 It's already been admitted. So it made me look real bad.

3 THE COURT: It doesn't matter.

4 THE DEFENDANT: And then when I started talking about it

5 you --

6 THE COURT: You wouldn't like it marked as a government
7 exhibit.

8 THE DEFENDANT: They didn't even have it. I brought it
9 here this morning.

10 THE COURT: Yes, I know.

11 THE DEFENDANT: Why did you allow them to admit it
12 before me?

13 THE COURT: It's better to be called a defendant's
14 exhibit because it's your only exhibit.

15 THE DEFENDANT: Why did you let them use it first if you
16 knew it was my exhibit, was my only exhibit and --

17 THE COURT: Because their case wasn't finished.

18 THE DEFENDANT: Judge, they didn't have it, they got it
19 from me this morning. How are you going to let them use my
20 exhibit?

21 THE COURT: Because their case wasn't -- look, you
22 listen to me.

23 THE DEFENDANT: Why did you give it to them?

24 THE COURT: You listen to me for a second. That
25 document was part of the record. The government before its case

1 ended was entitled to use anything in that.

2 THE DEFENDANT: That I give them?

3 THE COURT: It's in the record. Yeah. It doesn't
4 matter. It could come from Mars. It's in the record. They
5 could use it.

6 Do you understand that's their right?

7 THE DEFENDANT: It wouldn't have been there and brought
8 it in, then they couldn't have used it. You made me use my
9 exhibit before anybody come in, and then you let them use it
10 before me. You know that's not right.

11 THE COURT: Their case wasn't finished. They had to use
12 it before you.

13 THE DEFENDANT: Okay. I can't -- you know what, I don't
14 even know why we having these sidebars. I'm done with the
15 sidebars.

16 THE COURT: Fine with me.

17 (Proceedings heard in open court:)

18 THE COURT: Well, Mr. El Bey, do you have any additional
19 documents you want to introduce? Or do you want to testify
20 personally? Do you have additional witnesses you want to
21 testify?

22 THE DEFENDANT: No.

23 THE COURT: If not, then you rest.

24 Is there any rebuttal from the government? The
25 government is entitled to rebuttal.

1 MS. MALIZIA: No, your Honor, we have no rebuttal case.

2 THE COURT: Okay. Well, okay, ladies and gentlemen. So
3 that concludes the evidentiary phase of the case. The next phase
4 is instructions to the -- no, I'm sorry. The next phase is
5 closing arguments.

6 So the government and Mr. El Bey, they are each entitled
7 to make a statement to you which is not evidence, not testimony,
8 but it's their effort to summarize what they think the evidence
9 you've heard, the witnesses and the documents, have established.
10 All right?

11 So it's argument, it's not testimony. You have heard
12 the testimony, you have seen a lot of documents, that's the
13 evidence. And the closing argument is an attempt to explain it,
14 unify it, and show how it either supports conviction or supports
15 acquittal, depending on who is presenting the closing argument.

16 And we have to have, as the lawyers and parties, we have
17 to have a short conference in advance in order to settle on the
18 instructions, which I will give you to guide your deliberations.

19 So the reason that I have to have this conference with
20 them before the closing arguments is that their closing arguments
21 have to be consistent with the instructions I'm going to give
22 you.

23 So what I anticipate is taking a break now, for the
24 jury, excusing the jury so we will have the instructions
25 conference, and then return for the closing arguments.

1 Now if this instruction is protracted, I'll make your
2 break into lunch and extend it. But maybe it only will last a
3 few minutes.

4 So I'll ask you to remain in the jury room for a little
5 while. And if it looks as if there is going to be delay and
6 postpone your lunch, then I will release you for lunch.

7 (At 11:24 a.m. jury out.)

8 THE COURT: Can I have my --

9 LAW CLERK: Judge, if we can have a moment with you
10 briefly? There was one additional.

11 THE COURT: Okay. I have to talk to my law clerk.

12 MR. HOTALING: Judge, do you want to do this now?

13 THE COURT: I just have to talk to my law clerk for a
14 second. Then we will have the conference.

15 But are people permitted at the conference? I mean is
16 the audience permitted at a --

17 MR. HOTALING: At a jury instruction conference?

18 THE COURT: Yes.

19 MR. HOTALING: It can be done in open court, Judge, it
20 can be done in chambers, as long as it's on the record we can do
21 it however you would prefer.

22 THE COURT: I forget how I did it the last time I had a
23 trial.

24 MR. HOTALING: We can certainly do jury instructions in
25 open court.

1 THE COURT: What do you prefer?

2 MR. HOTALING: Whatever you prefer, your Honor.

3 THE COURT: Mr. El Bey, would you like the audience
4 present when we discuss the jury instructions or not?

5 THE DEFENDANT: Yeah. I won't bother me.

6 THE COURT: Okay. So then they can stay.

7 Okay, I'll be back in one second.

8 (Pause.)

9 THE COURT: Okay. So --

10 LAW CLERK: Judge, the defendant is not in the
11 courtroom.

12 THE COURT: Oh. So we will wait for Mr. El Bey to
13 return.

14 (Defendant in.)

15 THE COURT: So I have the instructions -- so I have the
16 instructions that were proposed by the government. And I think I
17 had discussed some changes I had wanted to make in them and I
18 think Mr. El Bey did not propose instructions, is that correct?

19 Yeah. But of course you can comment, so I thought what
20 I would do is --

21 THE DEFENDANT: I didn't get any, Judge.

22 THE COURT: Excuse me?

23 MR. HOTALING: The ones that were filed with the Court,
24 I have with the ones I just printed out. We can look together at
25 them if you like.

1 THE DEFENDANT: Okay. That's no problem.

2 MR. HOTALING: These are the ones that were filed on the
3 docket, the publicly filed ones. We can talked about it.

4 THE COURT: See, it doesn't really matter. I'm going to
5 read them out loud, and these are the government's instructions
6 with my modifications.

7 And then you, both sides, can suggest changes. So most
8 of this will be reading. But I will indicate where I'm making
9 some changes.

10 Or should I just indicate my changes, or what?

11 MS. MALIZIA: That might be more efficient, your Honor.

12 THE COURT: I'm sorry?

13 MS. MALIZIA: That might be more efficient, your Honor.

14 THE COURT: Okay. So Mr. El Bey has your instructions?

15 MR. HOTALING: Yes, Judge.

16 THE DEFENDANT: Yes.

17 MR. HOTALING: Yes, Judge.

18 THE COURT: You all have the instructions?

19 MR. HOTALING: Yes, we are all working off the same set.

20 THE COURT: I will just indicate the change I'd like to
21 make and you tell me if you disagree.

22 MR. HOTALING: And, Judge, if I might, you know, it
23 might be easier -- I don't -- I'm not suggesting that you read
24 each one. If we could go through each one, though, because
25 obviously, for example, on the first instruction there are some

1 bracketed portions, and I think we just need to figure out if we
2 are going to remove brackets, for example, on Page 1.

3 THE COURT: Where do you see brackets?

4 MR. HOTALING: In the government's proposed instruction,
5 in instruction number 1, the first -- actually the second
6 sentence: I will give each of you a copy of these instructions
7 to use in the jury room or each of you has a copy of these
8 instructions to use in the jury room.

9 I wasn't sure if there was particular language you
10 intended to use. Are you going to give 12 copies of the
11 instructions to the jurors?

12 THE COURT: Yes. They should each have a copy.

13 MR. HOTALING: Great.

14 So we would eliminate the second?

15 THE COURT: Let me ask you, when do I excuse the
16 alternates?

17 MR. HOTALING: At the conclusion of the jury
18 instructions and before you discharge the jury to begin their
19 deliberations, you would excuse at that point.

20 THE COURT: Okay. So I'll -- all right. So I'll tell
21 them: I will now instruct you on the law you must follow and
22 you'll each have a copy of the instructions in the jury room.
23 Okay.

24 Is there any other bracketed, anything else?

25 MR. HOTALING: Not on number 1.

1 THE COURT: Anything else you'd like me to discuss?
2 well, let me read you my changes. And then you can tell
3 me what you think of those, and then you can go back and make
4 changes.

5 You have one blank here. This is on Page 15.

6 MR. HOTALING: You know what, Judge, I think -- we will
7 withdraw that.

8 You know, Judge, we will actually withdraw government
9 instruction number 14, because we didn't actually proffer Agent
10 Ponzo as an opinion or an expert witness.

11 THE COURT: Yeah, okay. My law clerk pointed out a
12 problem.

13 I asked my secretary to retype the instructions with the
14 changes I had made. I have some additional changes, but as a
15 result this copy is not identical.

16 So should we get -- is Pat here?

17 Could you come up for a second, Pat?

18 LAW CLERK: Judge, if I may suggest maybe we break for
19 lunch early, and we take our lunch hour to get clean copies.

20 THE COURT: No, no. That's not necessary.

21 (Pause.)

22 THE COURT: okay. So my secretary is going to get the
23 original, and then I'll be able -- and it will have -- and then
24 that will indicate the changes I made and that are on this draft.

25 But we can, while waiting, I do want to discuss the

1 principal change that I have made.

2 It has to do with, beginning with government instruction
3 27.

4 So my problem I had -- this with this other case -- the
5 jurors of course are not lawyers, and I don't like the idea of
6 throwing legalese at them.

7 And so look at Page 29. So, okay. So you have number
8 one, defendant may -- and such.

9 Okay. Number two, the claim was false, fictitious or
10 fraudulent.

11 What is that supposed to be about?

12 MR. HOTALING: I guess I'm not --

13 THE COURT: What's the difference between false and
14 fictitious?

15 MR. HOTALING: Judge, I don't have the benefit of a
16 dictionary in front of me so I can't give you a --

17 THE COURT: Well, a dictionary is not going to help you.
18 If you don't know what fictitious means you're not going to learn
19 it from a dictionary.

20 MR. HOTALING: Fictitious is made up.

21 THE COURT: What's false?

22 MR. HOTALING: Not true.

23 THE COURT: Well, if it's made up it's not true. Unless
24 you think fiction can be truer than fact, right?

25 MR. HOTALING: And, Judge, I --

1 THE COURT: Isn't fraudulent -- the claim was
2 fraudulent, right?

3 MR. HOTALING: And, Judge, obviously the reason that we
4 are doing this is because we wanted to make sure that we are
5 tracking not only the statutory language that fits the offense of
6 conviction or potential offense of conviction, but also the
7 indictment.

8 So that if the jury wants to take a copy of the
9 indictment and they want to match it up with the instructions, so
10 that I just want to make sure that we are following along exactly
11 here. I mean, Judge --

12 MR. FUENTES: I mean --

13 THE COURT: That's a legitimate point, yes.

14 MR. HOTALING: I mean, just so we're clear, the
15 indictment says that the defendant made, presented and caused to
16 be presented to the IRS, an agency of the United States
17 Department of --

18 THE COURT: That's fine.

19 MR. HOTALING: -- knowing that the claim was false,
20 fictitious, and fraudulent.

21 THE COURT: what?

22 MR. HOTALING: Knowing that the claim was false,
23 fictitious and fraudulent.

24 THE COURT: And fraudulent?

25 MR. HOTALING: It's charged in that way, yes.

1 THE COURT: But this says "or fraudulent."

2 MR. HOTALING: Judge, that goes again to the idea of
3 charging in the -- charging in the disj- --

4 MR. MALIZIA: Conjunctive.

5 MR. HOTALING: -- charging in the conjunctive and
6 proving in the disjunctive, which as the -- well, as the Seventh
7 Circuit has said repeatedly, that that's a permissible way of
8 charging..

9 THE COURT: Are you going to tell the jury that,
10 conjunctive or disjunctive?

11 MR. HOTALING: No. I just want them to say that the
12 claim was false, fictitious or fraudulent.

13 THE COURT: Well, you are worried about them comparing
14 the instructions with the indictment, and the indictment says:
15 false, fictitious and fraudulent. And then they might say to
16 themselves: Well, I don't know, maybe it's false -- maybe it's
17 false, maybe it's fictitious, maybe it's fraudulent, but we're
18 not sure it's all three.

19 MR. HOTALING: Judge, again, the law of the circuit is
20 that you charge this way in the indictment, you prove this way in
21 the instructions.

22 So that's what the --

23 THE COURT: What a stupid indictment then.

24 MR. HOTALING: I would disagree with that, Judge.

25 THE COURT: Because the indictment says it's going to be

1 false, fictitious and fraudulent, and then you tell the jury that
2 even though the indictment says that they don't have to find
3 that.

4 MR. HOTALING: This is what the law requires the
5 government to prove beyond a reasonable doubt.

6 THE COURT: Even though it's not consistent with the
7 indictment.

8 MR. HOTALING: Judge, it's consistent with the law.
9 It's consistent with the law.

10 THE COURT: But it's not consistent with the indictment.

11 MR. HOTALING: No, it is consistent with the indictment.

12 THE COURT: No, it isn't. Because false, fictitious and
13 fraudulent does not mean the same thing as false, fictitious or
14 fraudulent.

15 MR. HOTALING: Judge, you're right. But under the
16 law -- and again I hate to keep citing to the law, Judge.

17 THE COURT: The law. Honestly.

18 MR. HOTALING: Again, it's a problem with us being
19 lawyers, Judge, but if it's properly charged --

20 THE COURT: It certainly is a problem. And there is
21 nothing that requires you in the indictment to say false,
22 fictitious and fraudulent. That's not the law.

23 MR. HOTALING: That's what the statute refers to.

24 THE COURT: The statute doesn't require proof of false,
25 fictitious and fraudulent. It's forbidding those --

1 MR. HOTALING: Yes.

2 THE COURT: It's forbidding each of them, not the
3 conjunction of them.

4 MR. HOTALING: Judge, I'm not sure how you want to
5 resolve this. We can --

6 THE COURT: I understand your concern. You want to make
7 sure that they can do this in the disjunctive. I don't know what
8 to do about it.

9 I don't really understand four either: The defendant
10 acted with the intent to defraud.

11 You say it's false. You say the defendant -- or, the
12 jury has to find that it was false. And it was a claim against
13 the Internal Revenue Service. How could there not be intent to
14 defraud?

15 MR. HOTALING: Judge, I think that's why the Seventh
16 Circuit committee feels that it's necessary to include, you have
17 to show that there was an intent to defraud.

18 THE COURT: But if one, two and three show -- if one,
19 two and three are satisfied, then of course there was intent to
20 defraud.

21 MR. HOTALING: And, Judge, I'm going to be honest, it's
22 been a while since I looked at the law under 287. I don't know
23 if the Seventh Circuit has made the specific determination, but
24 287 is specific intent crimes.

25 THE COURT: These pattern instructions are not binding.

1 They are not the law. They are suggestions.

2 The other thing --

3 MR. HOTALING: Actually, Judge -- I'm sorry.

4 Going to that particular -- I'm actually looking at the
5 book if you don't -- and so it's bracketed in the pattern, in the
6 jury instruction book.

7 And looking at the comment, the fourth element, "intent
8 to defraud" is bracketed because it's unsettled in this circuit
9 whether proof of intent to defraud is required under Section 287,
10 and it cites a particular case in 1996.

11 THE COURT: Of course there has to be intent to defraud.
12 The point is that the first three points make crystal clear that
13 the person has to be acting intentionally, using a false
14 statement, in order to get something from the Internal Revenue
15 Service.

16 MR. HOTALING: Yes.

17 THE COURT: That is so clear that it's just muddied up
18 by this pattern instruction.

19 MR. HOTALING: You mean the fourth element.

20 THE COURT: And the pattern instruction is not the law.
21 It's just a suggestion. The lawyers who draw up these --

22 MR. HOTALING: Patterns.

23 THE COURT: -- suggestions -- forget the pattern -- they
24 do not understand that jurors do not -- do not get legal jargon.
25 And it's not that difficult to state things in language which

1 ordinary people can understand.

2 Now, the other thing that bothers me about the
3 instructions is this concept of materiality, all right?

4 So materiality is not a word that most people use. Now,
5 you tell me what does materiality mean?

6 MR. HOTALING: That it has the ability to influence the
7 decision-maker, that it was made in such a way that it had the
8 ability to influence the person to whom the statement was
9 directed.

10 THE COURT: Okay. So what you want to say is the
11 defendant made a false statement that was important to the
12 Internal Revenue Service's decision. Is that what you mean?

13 MR. HOTALING: That it had the ability to influence the
14 decision-maker of that body. That the statement was such that it
15 had the ability, that they were in a position to rely on it, that
16 they did rely on it, and that it had an impact on their
17 decision-making with respect to whatever the claim is that's
18 before them.

19 THE COURT: So it's important to the decision of the
20 IRS.

21 MR. HOTALING: Yes. It's capable of influencing the
22 decision of the IRS.

23 THE COURT: I'm haunted by "capable of influencing."

24 MS. MALIZIA: Your Honor, I think the distinction is
25 something could be important to you but it may not affect your

1 decision-making.

2 THE COURT: But "capable of" also doesn't mean that it
3 always affects their decision.

4 MS. MALIZIA: No, but it has to have the ability to do
5 that, be material.

6 THE COURT: I know, but that's not the same thing.

7 MS. MALIZIA: It's not the same thing as important,
8 either.

9 THE COURT: Pardon?

10 MS. MALIZIA: It's not the same thing as important,
11 either.

12 THE COURT: okay. So find an alternative.

13 MR. HOTALING: I'm sorry?

14 THE COURT: what's the alternative?

15 MS. MALIZIA: "Capable of influencing." It's in the
16 instruction.

17 THE COURT: Pardon?

18 MS. MALIZIA: "Capable of influencing." It's in the
19 instruction. I don't know why a jury would not be able to grasp
20 that concept.

21 THE COURT: well, the problem with it is that "capable
22 of influencing" doesn't mean it did influence.

23 MS. MALIZIA: That's right. And that is an important
24 distinction. It doesn't actually have to influence.

25 In this case, it arguably did.

1 MR. HOTALING: Because that's the next sentence of the
2 instruction, Judge. It's not necessary that the false statement
3 actually have had that influence or actually have been relied on
4 by the victim, as long as it was simply capable of doing so.

5 THE COURT: Well, so it "could influence"?

6 MR. HOTALING: If it "could influence"?

7 THE COURT: Wouldn't that be a little more
8 straightforward than "capable of influencing"?

9 MR. HOTALING: So instead what we would read is: A
10 false or fraudulent pretense, representation or promise is
11 material if it could influence the decision of the IRS.

12 Judge, it's the government's position that we would go
13 with -- it's our recommendation that we go with the instruction
14 and the definition that's included in the pattern instruction
15 manual. That is our recommendation. That would be our proposal.

16 If you are saying that you are insistent on changing
17 this particular language, I think that then the next best
18 alternative would be "could influence."

19 MR. FUENTES: Your Honor, may standby counsel be heard?
20 And I'd like to explain why I'm asking to be heard now, if I may.

21 THE COURT: Sure.

22 MR. FUENTES: My concern, as standby counsel at this
23 point, first of all, the Court wishes me to remain through
24 closing arguments, is that correct?

25 THE COURT: Yes.

1 MR. FUENTES: That is because there is a possibility
2 that I could be appointed trial counsel to possibly deliver a
3 closing argument, is that correct?

4 THE COURT: No. I was thinking more that, although it's
5 very unlikely, I want to make sure that Mr. El Bey has the option
6 to consult you.

7 Now, so far obviously he's been quite emphatic that he
8 doesn't want to, and I'm sure he will adhere to that. But I want
9 to leave the door open, if he should change his mind.

10 That's the only reason that I have been reluctant to
11 release you, as we stand here.

12 MR. FUENTES: And I'm not inquiring so much trying to
13 get released at this point, but trying to project for the Court
14 the scenario: In the event that I were trial counsel at the time
15 of closings, there are some points I would like to make about
16 these instructions.

17 And if I were trial counsel and the pattern instruction
18 wasn't given, I probably would object to that.

19 I probably would also insist that "materiality" be
20 included in the instruction number 27. I have authority for
21 that. It's in the committee comments to the Seventh Circuit
22 pattern book.

23 And I think the "false or fraudulent or fictitious"
24 statement that is made under the false claims statute must be
25 material.

1 The committee comments said the Seventh Circuit has not
2 yet decided that issue yet, but the weight of authority in the
3 other circuits is that where the statement was fraudulent -- so
4 they draw a distinction between fraudulent and false or
5 fictitious -- where the statement was fraudulent -- and that's
6 clearly the government's theory here -- it must be material.

7 And there is another case, a Supreme Court case that
8 says where it's material, and where the jury is not instructed on
9 materiality, it's reversible error.

10 So that issue would be in the record in my mind if the
11 Court didn't deliver the pattern instruction and didn't include
12 materiality in the modified pattern instruction.

13 THE COURT: Okay. So let me interrupt you for a second.

14 So what you're saying is that if you were Mr. El Bey's
15 lawyer you would want the -- you would want the government's
16 instruction, is that right?

17 MR. FUENTES: With the addition of number five: The
18 statement must be material.

19 THE COURT: Well, that was in there.

20 MR. HOTALING: It wasn't actually on 287, on our 287.
21 It's the same one that you were just referring to, Judge, where
22 we talked about number four.

23 THE COURT: Right. But you did have "materiality" in a
24 later paragraph.

25 MR. HOTALING: It's materiality with reference to the

1 mail fraud statute. In the mail fraud counts.

2 THE COURT: Materiality.

3 MR. HOTALING: And we did not include a materiality
4 element with respect to the 287 false claim count.

5 I understand Mr. Fuentes's point though.

6 MR. FUENTES: I'm saying I would insist on the
7 inclusion, also include that as an instruction, and I would
8 prefer the language in the pattern instruction defining
9 "materiality" as capable of influencing the decision-maker.

10 I think "could" is softer and more speculative and more
11 easy to satisfy than "capable."

12 So I would prefer the pattern instructions with the
13 modifications I have suggested on the 287, which is instruction
14 number 27, Judge. And my concern about that is that if I wind up
15 having to advise him and argue that it's all fair, we have this
16 discussion now rather than my injecting it later after they have
17 already done their opening closings, Judge.

18 THE COURT: So what are you saying, Mr. Hotaling and
19 Miss Malizia?

20 MR. HOTALING: With respect to the issue of -- I'm
21 sorry, Judge?

22 THE COURT: The suggestion of having that materiality
23 definition in regard to the defrauding as opposed to the --

24 MR. HOTALING: It would be on both, both offenses.

25 THE COURT: Having a fifth paragraph.

1 MR. HOTALING: Well, actually, Judge, I'm not sure we
2 would necessarily need to have a fifth one. I think what you
3 could do is you could, on element number 2, which says that the
4 claim was false, fictitious or fraudulent, you could say the
5 claim was materially false, fictitious or fraudulent. That
6 matches up with the language of the mail fraud count, which again
7 refers to the fact that the scheme to defraud involved a
8 materially false or fraudulent pretense, representation or
9 promise.

10 So getting back to that original question, we would be
11 fine with inclusion of materiality on that particular element.

12 THE COURT: Is that -- what do you think?

13 MR. FUENTES: That would be fine with me, Judge, were I
14 in that position.

15 THE COURT: Okay. All right. Well, I think I'm going
16 to give up.

17 All right. So we will use the government's proposed
18 instructions with this addition, paragraph 5.

19 MR. HOTALING: And, Judge, again, on that particular
20 one, it won't be a new paragraph 5. We will add the word
21 materially into element two.

22 THE COURT: Right. I understand. So you make that
23 change.

24 And apart from that I will look at the -- so we had this
25 little change, the bracketed change.

1 (Pause.)

2 THE COURT: Let me just speak to my law clerks for a
3 second.

4 (Pause.)

5 THE COURT: okay. Could you tell the jurors that they
6 can go and have lunch, and we will give them a long lunch break.
7 They should come back at 1:30.

8 MR. HOTALING: 1:30. okay. Perfect. Perfect.

9 THE COURT: Okay. So --

10 LAW CLERK: Can I have a word?

11 (Discussion off the record.)

12 MR. FUENTES: One moment, please.

13 MR. HOTALING: Sorry. My apologies, Judge.

14 MR. FUENTES: Thank you.

15 MR. HOTALING: I'm sorry.

16 And, Judge, following our pretrial conference a couple
17 of weeks ago, there were a couple of specific things that you had
18 mentioned that you wanted to have changed.

19 For example, the removal of witness demeanor as part of
20 those factors to be considered in witness credibility. I have
21 removed that that I will forward to your clerk.

22 Similarly, you had asked that we include an example, and
23 the example that's contained in the pattern instruction book
24 about direct versus circumstantial evidence.

25 THE COURT: Yes.

1 MR. HOTALING: I inserted the raining example that you
2 will see in the version that I will send. Actually, I'm happy to
3 show Mr. El Bey right now what that language is. And Mr. Fuentes
4 too.

5 THE COURT: Another little change I'd like to make --
6 maybe we discussed this before -- this is in the --

7 THE DEFENDANT: Judge, can I ask you a question though?

8 THE COURT: Let me finish.

9 In the mail fraud, when you say the defendant knowingly
10 devised or participated in a scheme, I thought it would be better
11 to say that the defendant engaged in a scheme.

12 would you have a problem with that? Because I don't
13 think you are really trying to show that he devised a scheme
14 which was then executed by some accomplice, right?

15 MR. HOTALING: No. No. It's certainly the government's
16 theory of the case that this was his scheme, that his --

17 THE COURT: Right. So could I say engaged in a scheme?

18 MR. HOTALING: My preference again, Judge, because I'm
19 always very reluctant -- and I will be very honest, Judge -- I'm
20 very reluctant --

21 THE COURT: Is this a pattern thing?

22 MR. HOTALING: It is.

23 THE COURT: okay. All right.

24 MR. HOTALING: Just so you understand, I'm just very
25 hesitant to deviate from the patterns and risk the ire of your

1 colleagues upstairs.

2 THE COURT: All right. No, that's fine.

3 The only other thing I had just -- I mean, this is
4 trivial nitpicking, but in the very last page, in considering
5 whether the government has proven a scheme to defraud.

6 well, it should be proved, okay? Because proven is the
7 adjective and proved is the participle.

8 MR. HOTALING: I'm sorry. Which page is that?

9 THE COURT: I think it's Page 24.

10 MR. HOTALING: Page 24, first sentence. Good catch,
11 Judge.

12 THE COURT: That's minor.

13 So, Mr. El Bey, you wanted to say something?

14 THE DEFENDANT: Yes. I was just curious why, you know,
15 as a defendant, and I had to send everything that I did, but I
16 never got any of these. I could have been reading this. You
17 know, I have never got any of it.

18 MR. HOTALING: It was filed.

19 THE DEFENDANT: What?

20 MR. HOTALING: These were all filed.

21 THE DEFENDANT: Yeah, but when I filed mine I still send
22 you all a copy.

23 what I'm saying is I could have been reading on it and
24 you all --

25 THE COURT: You didn't get a set of the proposed jury

1 instructions from the government?

2 THE DEFENDANT: I gave you the jury instructions. You
3 just denied them.

4 THE COURT: Pardon?

5 THE DEFENDANT: I did give you a copy of my jury's
6 instructions. You just denied them. I mean, the jury rules.

7 Say that one more time, the jury instructions?

8 THE COURT: No, I'm sorry. The government proposed --
9 the instructions, that's what I tell the jury, I'm instructing
10 them.

11 So the government has drafted a set of proposed
12 instructions which you could have done but you didn't do it.

13 THE DEFENDANT: Okay. But I did, but I'm just saying I
14 didn't even receive a copy of it.

15 THE COURT: You didn't get the government -- the
16 government didn't give you a copy?

17 THE DEFENDANT: I never received them.

18 MR. HOTALING: Judge, we filed them on the docket. They
19 are publicly filed. They are the same materials that Mr. Bey --
20 everyone in this courtroom gets a copy of these instructions.

21 THE DEFENDANT: Whatever I file, because that was in
22 your order when the case first started was, make sure that the
23 defendant or the plaintiff get a copy. And I didn't get a copy
24 of anything.

25 As a matter of fact, I had nothing been answered with

1 me. So what I'm saying is I haven't got a copy of anything.

2 MR. HOTALING: Judge, with all due respect to Mr. El
3 Bey, we actually talked about each of these instructions at the
4 pretrial conference two weeks ago. So he had them in front of
5 him then.

6 So whether or not he didn't want to take a copy --

7 THE DEFENDANT: I never had --

8 MR. HOTALING: -- he was offered a copy to him.

9 THE DEFENDANT: I never had them.

10 MR. HOTALING: He doesn't accept them, Judge. That
11 doesn't mean that he doesn't have an opportunity to have access
12 to them. If he doesn't want to take them, if he doesn't want to
13 get the information, I can't control that.

14 THE COURT: Do you have a copy you can give him right
15 now?

16 MR. HOTALING: He is looking at one right now, Judge,
17 because Mr. Fuentes has a binder and he is scrolling through it.

18 THE DEFENDANT: Mr. Fuentes got it and I didn't.

19 MR. FUENTES: And everything Mr. Fuentes said or did
20 shouldn't reflect anything in the record, any assistance provided
21 or accepted by Mr. El Bey.

22 MR. HOTALING: And similarly, I have a copy that I have
23 at the podium that he is welcome to look on with.

24 We can make him copies. He doesn't want to take the
25 copies that --

1 THE DEFENDANT: But I could have been looking at them in
2 advance. You dropped them on me, you all want me to read
3 everything in two minutes.

4 THE COURT: No, I didn't expect you to read anything.

5 THE DEFENDANT: And that's what I'm saying. I'd like to
6 sit down and read and comprehend like everybody do.

7 Like I said, nothing has been fair. And so hey, I came
8 to accept that. I know what I'm up against now, so --

9 THE COURT: But you have a copy now. Okay.

10 THE DEFENDANT: But this guy here, he decided to take it
11 and look at it. But where am I going to read it at? When you
12 send me to lunch?

13 THE COURT: Well, we are going to break until 1:30. So
14 you can read them.

15 MR. HOTALING: And, Judge, if he would like --

16 THE COURT: The problem is this is the instructions
17 conference.

18 THE DEFENDANT: You see what I'm saying? That's what
19 I'm saying to you. And you all changing everything.

20 I don't know what you're changing. I mean, y'all almost
21 like I'm not here, and then you doing everything like I'm not
22 here. And I just sit here and just look at it.

23 THE COURT: I am not -- I'm not changing anything.

24 THE DEFENDANT: And, Judge, you know what you doing and
25 they do too. So I can't --

1 THE COURT: I tried to give you every opportunity to
2 testify, object, cross-examine, introduce.

3 THE DEFENDANT: Testify against what? He hasn't proved
4 anything. There hasn't been nothing proved, Judge. What would I
5 testify for?

6 THE COURT: If you don't open up the documents that are
7 sent to you what am I supposed to do?

8 THE DEFENDANT: Wasn't no documents sent to me though.
9 That's it.

10 MS. MALIZIA: Your Honor, we have provided these filings
11 and a full paper copy of the discovery in open court at the
12 pretrial conference, and he walked out and refused to take them.

13 THE DEFENDANT: They brought a box in here.

14 You said, just like your discovery has to be on the
15 record and has to be sent to me, Judge. Wasn't none of that
16 done. We both know that.

17 I mean, we are sitting here arguing about it. I'm not
18 trying to argue about that. It is what it is now, Judge.

19 All I'm saying is if she has discovery, she can put them
20 on the record. And she would have sent them to me like I did. I
21 went out my pocket and mailed them. That's all I'm saying.

22 And when she brought that box in here it was -- it was
23 past the due date. You had -- you said January 26th was the last
24 date for all discoveries. When we talked again it was February
25 the 9th. And they didn't send me a box --

1 MS. MALIZIA: Your Honor, we don't need to reopen this.

2 MR. HOTALING: We don't need to rehash this, Judge.
3 We have already dealt with the issues. You have already dealt
4 with those issues back at the pretrial conference in February.

5 I don't see any need to go back and rehash those
6 particular discussions.

7 THE DEFENDANT: Well, again, like I say, Judge, when
8 they speak you listen. When I speak it's nothing. So I came to
9 that conclusion that this is how it's going to be. So I just got
10 to deal with it. And I'm not going to fool myself and so --
11 okay --

12 MR. HOTALING: Judge, I'd like the record to reflect
13 that the course of this trial completely refutes that statement,
14 that this Court has not given the defendant an opportunity to be
15 heard, an opportunity to present evidence, an opportunity to
16 present whatever arguments he feels fit. This record on this
17 trial is clear.

18 THE DEFENDANT: And I would like to put on the record
19 that that's absolutely wrong, and that I have not been given a
20 fair trial.

21 No discovery was answered, no real evidence -- and then
22 my only exhibit that you told me I had to let the Court see, you
23 let them take it and use it before I used it. And they didn't
24 have it. And you said because it was in the record now.

25 THE COURT: They did have it.

1 THE DEFENDANT: Okay.

2 THE COURT: It's in the record of the case.

3 THE DEFENDANT: Okay. You know what, Judge, you know,
4 you the Judge. So you know what, I'm going to -- hey, I'm gonna
5 do? You the man, so I got to sit here --

6 THE COURT: I have no stake in the case.

7 THE DEFENDANT: You know, Judge --

8 THE COURT: Look, just understand. I have no stake in
9 this case.

10 THE DEFENDANT: You do.

11 THE COURT: If you are convicted, you are acquitted,
12 it's none of my business, right? All I'm trying to do is
13 manage -- I'm the stage manager. I have to manage this thing.
14 Very, very difficult when one of the parties doesn't have a
15 lawyer. Because it puts you at a big disadvantage.

16 THE DEFENDANT: But you know what, Judge --

17 THE COURT: This is a self-inflicted disadvantage. And
18 you have been warned that if you don't have a lawyer and you
19 refuse to consult the standby counsel you're at a big
20 disadvantage. Now I have tried to give you every break. But I
21 can't just let you do anything that you want to you if it's not
22 consistent with legal rules.

23 THE DEFENDANT: The law. Okay. And, Judge, and that's
24 a beautiful thing.

25 And so what I am saying to you is this: Is that you

1 haven't given me a fair chance because I'm not a lawyer, and I'm
2 not with the bar or, you know, with your group of people. Your
3 standard of people. So I understand that.

4 But, you know, if we are going to follow the law, I have
5 a chance. But if we're not going to follow the law, then no, I
6 don't have a chance.

7 And the rules that you made you didn't hold up. Because
8 everything that you said on the record at the beginning of the
9 case, I followed to the exact. But they didn't. And you allowed
10 it to happen.

11 Nothing has happened in this case. They haven't proven
12 anything. Only thing they did was they showed this little stuff
13 of what I did with the money, and that's nothing. Because they
14 haven't proved anything.

15 So what I'm saying to you is this: You allowing this to
16 happen. You allowed this to get this far. So only thing I can
17 do is accept what I got coming.

18 THE COURT: I don't know what I allowed to happen.

19 They had evidence. They had documents. They had
20 witnesses. You could make objections.

21 THE DEFENDANT: Why, Judge? You been overruling
22 everything I did. Whatever I did, you didn't let it go.

23 THE COURT: That's not true.

24 THE DEFENDANT: Judge, you haven't given me anything.
25 You haven't give me one thing.

1 THE COURT: I let you testify. I let you have exhibits.
2 I let you cross examine.

3 THE DEFENDANT: You let me testify to what, Judge?

4 MR. HOTALING: You had the option.

5 THE COURT: I said to you, if you wanted to testify,
6 you'd go into the box, you would swear to tell the truth and then
7 you could testify.

8 THE DEFENDANT: What am I going to testify for, Judge?

9 THE COURT: That's what I said to you. And you said you
10 didn't want to testify.

11 THE DEFENDANT: No.

12 THE COURT: And now don't blame me --

13 THE DEFENDANT: Why would I use my Fifth Amendment.
14 There ain't nothing been proven. You never allowed anything else
15 to happen, why would I get up there when they haven't proven
16 anything.

17 THE COURT: Right. You don't have to testify. It's
18 your right. If you don't testify, well, then the jury doesn't
19 hear your testimony.

20 THE DEFENDANT: Okay.

21 THE COURT: Okay. That's just the way it is.

22 THE DEFENDANT: Okay. I don't have a problem with that.

23 THE COURT: All right. So why don't we take a break.

24 MR. HOTALING: And so, Judge, as long as it's acceptable
25 to the Court, I will provide your clerk a copy of the electronic

1 version of the jury instructions that I had modified slightly
2 based upon, again --

3 THE COURT: Right.

4 MR. HOTALING: -- our previous conversations. And one
5 thing --

6 THE COURT: Well, before you do that.

7 But you'll be sure to give Mr. El Bey and Mr. Fuentes --

8 THE DEFENDANT: What? You want to give me something
9 now?

10 MR. HOTALING: I'm happy to give you something. I'm
11 happy to. Absolutely, Judge.

12 THE DEFENDANT: I know what you want to give me, but
13 what am I going to do.

14 MR. HOTALING: If it's one thing it's not the other.

15 So let's deal with what we are dealing with right now.

16 THE DEFENDANT: Is it okay if I take this?

17 MR. FUENTES: Yes.

18 MR. HOTALING: So getting back to the point, Judge, I
19 will tender that. If Mr. El Bey tells me where he is and I can
20 print out a copy of what I am tendering to him, submitting to
21 your clerk, I'm happy to go print it out right now and meet you
22 and give you a copy of it.

23 THE DEFENDANT: I'm probably going to be downstairs on
24 the second floor.

25 MR. HOTALING: Second floor in the cafeteria? Done.

1 And then I assume that your clerk is going to make some
2 additional modifications.

3 LAW CLERK: Just the materiality for the false claims
4 charge that we discussed here, and then the "proven" to "proved"
5 are the two edits I had.

6 MR. HOTALING: And there is one additional one in
7 connection with the summary chart. I think what we will do is we
8 will actually go ahead and identify, because now it's three
9 particular exhibits have been admitted into evidence that were
10 summary charts: Summary Charts 1, 2 and 3.

11 It probably makes sense that we be explicit that those
12 are the three that have been admitted into evidence, but I can
13 even make that change in the version that I submit to you.

14 LAW CLERK: If you can do that that would be easier.

15 MR. HOTALING: I'll take care of it.

16 THE COURT: And they get all the exhibits.

17 MR. HOTALING: I think the game plan -- and that
18 actually raises a point, Judge.

19 what we have is a box of exhibits, original exhibits
20 that we can put on a cart, will go back to the jury, the CSO can
21 take that material back to -- because there is nothing that they
22 actually have to play, there is no need to have a jury laptop, so
23 we won't send anything back other than the copies of exhibits --
24 excuse me -- a copy of the jury instructions and the copy of the
25 indictment.

1 That has been redacted to remove any references to the
2 grand jury. Similarly, the signature blocks at the bottom. So
3 it is a clean indictment.

4 THE DEFENDANT: Can I ask a question though?

5 MR. HOTALING: Sure.

6 THE DEFENDANT: Judge, the indictment is already filed
7 on the docket. So you going to let him change the indictment
8 now?

9 THE COURT: It's not a change in the indictment. It's
10 to remove references that are not -- a couple little things.

11 Well, he'll show you.

12 MR. HOTALING: I have a copy of it right here, Judge.

13 But let me ask you a question: That's going to change
14 the whole projectory of the indictment, and then it's going to
15 confuse the jurors because if they got the original indictment
16 then they seeing this now. Why are we making corrections?

17 MR. HOTALING: They don't have the original indictment.

18 THE DEFENDANT: Okay. But why are we making corrections
19 now, though?

20 MR. HOTALING: This is for your benefit. And actually
21 the point of it --

22 THE DEFENDANT: For my benefit?

23 MR. HOTALING: Generally speaking, the benefit of the
24 defendant. To remove the fact that a grand jury has in fact
25 returned an indictment, and meeting in its constituted form has

1 returned an indictment based on the grand jury procedures.

2 So as a general protection for the defendant, we remove
3 the references to the grand jury. Similarly the signature block
4 at the very end in which it indicates the foreperson of the grand
5 jury.

6 Again, that's done for the general protection of ^the
7 defendant. If he doesn't want that, absolutely.

8 THE COURT: What was the other thing? A signature?

9 MR. HOTALING: There is a signature block at the very
10 end that says the United States Attorney and then there is a
11 signature block for the foreperson of the grand jury.

12 We generally remove that so, again, no references to
13 either the grand jury or to the United States Attorney as some
14 sort of sponsor or anything like that.

15 THE DEFENDANT: Well, who is bringing though? When you
16 remove the signature, we need a wet-ink signature on it.

17 MR. HOTALING: No, you -- no, you don't. No, you don't.

18 THE COURT: But do you want to leave the signature?

19 MR. HOTALING: The signature blocks. We can leave the
20 signature blocks.

21 THE DEFENDANT: But it wasn't signed nowhere.

22 MR. HOTALING: Okay. Now we are going off field --

23 THE DEFENDANT: Okay. Okay.

24 MR. HOTALING: -- here. So I don't know if we are going
25 to go --

1 THE DEFENDANT: I'm going to lunch, Judge.

2 THE COURT: Do you want the signature? Do you want the
3 signature left on?

4 THE DEFENDANT: I would like a wet-ink signature on it.
5 I would like to know who is bringing the case.

6 THE COURT: Wait, wait. The signature can't be changed,
7 in the sense of somebody else's name put there.

8 THE DEFENDANT: But what if it was never signed, Judge.
9 The indictment was never signed.

10 MR. HOTALING: Judge, you actually will have to go to
11 the 20th floor Clerk's office, to the original case file to
12 actually -- a decision was made a number of years ago by the
13 district court clerk to not file on the docket the original
14 signed -- that has the original signed signature of the
15 foreperson of the grand jury.

16 That was done for privacy reasons with respect to the
17 foreperson.

18 So when you go onto the document, you will see an
19 indictment that's been returned, and the minute entry reflects
20 that a grand jury has returned the indictment, but the signature
21 blocks are blank.

22 Now, if you actually want to see the original signed
23 indictment, you do need to go to the 20th floor to the Clerk's
24 office of the District Court on the 20th floor, get a copy of the
25 case file, and contained within the case file is the indictment

1 that has the original signatures of both the U.S. Attorney and
2 the foreperson of the grand jury.

3 So what I am proposing is, this is one that just has
4 blank signature blocks -- which I don't think has any value to
5 Mr. El Bey -- but if that's what he wants, we'll put that in.

6 THE DEFENDANT: It doesn't matter. It's all good.

7 THE COURT: I'm sorry? Do you want it in?

8 THE DEFENDANT: You know what, it doesn't matter. He
9 says it's in the docket on the 20th floor. I'm going to go up
10 and see. But other than that, it's no big thing. It's no big
11 thing.

12 THE COURT: I'm sorry. I just didn't understand.

13 MR. HOTALING: He wants to go up to the 20th floor.

14 THE DEFENDANT: Yeah, I'm going to go up on my lunch.

15 THE COURT: All right. I understand the 20th floor, but
16 I didn't understand the end of your sentence.

17 THE DEFENDANT: All right. No, sir. It does not have
18 to be on there.

19 THE COURT: It doesn't have to be. Okay.

20 THE DEFENDANT: I'm good with that.

21 MR. HOTALING: And one more procedural thing, Judge.

22 THE COURT: Yes.

23 MR. HOTALING: Now that we are moving toward the final
24 phase, I know that you would have liked to have kind of a
25 tutorial, for lack of a better term, about the next phase of the

1 case.

2 And I don't know if you wanted to discuss with him about
3 the rules about closing arguments, since that seems to be the
4 next thing we are heading into.

5 THE COURT: Right. I should.

6 Let me just ask you, Mr. Hotaling or Ms. Malizia, how
7 long do you think your closing argument will take?

8 MR. HOTALING: I mean 30, 35 minutes or so. Roughly in
9 that range for the opening close.

10 Rebuttal? 10, 15.

11 THE COURT: How many minutes ^do you think you'd like,
12 Mr. El Bey?

13 THE DEFENDANT: It's thinking no more than 15 or 20.

14 THE COURT: Okay. So before I mention the -- before I
15 give you your little briefing on the next phase, I think -- so we
16 will resume at 1:30.

17 And if you take a half -- or say you take 45 minutes,
18 including rebuttal, if you decide to rebut, and Mr. El Bey, say,
19 20 minutes. So about an hour.

20 That means that I would read the instructions to the
21 jury at about a quarter of 3:00. And then that probably takes
22 20 minutes.

23 Do you think the jury -- do you think it would be better
24 to have the jury deliberations begin then?

25 MS. MALIZIA: Yes, your Honor. We would ask they

1 deliberate at least until the end of the day, 5:00 o'clock.

2 THE COURT: Just until 5:00 though.

3 MR. HOTALING: It's obviously up to them.

4 MS. MALIZIA: Yes.

5 MR. HOTALING: It's up to the jury how long they would
6 prefer to deliberate. I mean, if they --

7 THE COURT: Well, no, there is a problem, right, because
8 I have to stay here. I don't want to stay here all night.
9 Right?

10 MR. HOTALING: That has --

11 MS. MALIZIA: There is also staff, court reporters --

12 THE COURT: So that's why I would like to not obviously
13 tell them how long their deliberations have to last, but to tell
14 them that if they don't have a verdict by 5:00, they should go
15 home and resume tomorrow morning.

16 MR. HOTALING: I'm sure the jury would appreciate that.

17 THE COURT: Pardon?

18 MR. HOTALING: I'm sure the jury would appreciate that.

19 MS. MALIZIA: And, your Honor, we will provide our
20 cellphone numbers to your clerk.

21 THE COURT: Okay. I appreciate that.

22 Okay. So Mr. El Bey, let me just say something about
23 closing arguments.

24 They are very much like opening arguments, and what each
25 side tries to do is explain to the jury how the evidence, which

1 consists of the testimony, and including answers given on
2 cross-examination, and the documents that were part of the
3 record, how those -- that evidence supports the government's case
4 when they are giving closing argument, your case when you are
5 giving a closing argument.

6 It's not testimony. It's not evidence. I think I
7 mentioned that to the jury. I will certainly emphasize it again.

8 It's just an attempt to summarize everything and, you
9 know, give a good argument for why you should be acquitted. Of
10 course, the government wants a conviction.

11 That's closing argument.

12 After that I instruct the jury, read the instructions,
13 and then they go and deliberate.

14 Now, if they return a verdict quickly, say before 5:00
15 o'clock, then we will all reassemble and I will ask the jury for
16 its verdict. And then you have a right -- I guess both sides
17 have a right, but I think it's mainly for the defendant -- you
18 have a right to ask me to poll the jury.

19 And what that means is to make sure it really is
20 unanimous -- because it has to be a unanimous jury -- I will ask
21 each one whether this verdict, which the foreman or foreperson of
22 the jury will have read, I will ask each of them whether this is
23 their verdict. And that's the end.

24 If you're convicted then there is a sentencing
25 proceeding, but that's later. Because the government, the

1 probation service does an investigation, and it can be several
2 months.

3 THE DEFENDANT: Can I ask you a question? You saying
4 they came back with a verdict and they found me guilty, will you
5 still me allow me to go home? Or are you going to hold me in
6 custody?

7 THE COURT: That -- you're on bail. If the government
8 asks me to cancel your bail I'd have to consider their request.

9 MR. HOTALING: we haven't thought about that, Judge.

10 MS. MALIZIA: No.

11 MR. HOTALING: We have not thought about that.

12 MS. MALIZIA: And just a remainder, there would also be
13 a forfeiture phase following deliberations on guilt or innocence.

14 THE COURT: Thank you. I forgot already, but I'm
15 writing it down.

16 MR. HOTALING: We also have some proposed instructions
17 that we are also happy to forward to you and to your clerk, so
18 that everything is -- if we do get to that second stage --

19 THE COURT: The forfeiture, have you shown the
20 forfeiture instructions to Mr. El Bey?

21 MS. MALIZIA: I tendered him a copy this morning, your
22 Honor.

23 THE COURT: okay. well, I will --

24 THE DEFENDANT: No.

25 MS. MALIZIA: I handed them to you and said it on the

1 record.

2 THE DEFENDANT: Oh, something you handed to me.

3 MS. MALIZIA: Yes. You have got it.

4 THE DEFENDANT: You did hand me something.

5 MR. HOTALING: Judge, one thing that I missed, is it
6 your preference that the foreperson actually read the verdict or
7 is it something that you intend to read?

8 THE COURT: I thought that was the standard.

9 MR. HOTALING: Which?

10 THE COURT: No. You're right. The foreman --
11 fore-whatever --

12 MR. HOTALING: Foreperson.

13 THE COURT: Seems like such an awkward construction --

14 MS. MALIZIA: Or forewoman.

15 THE COURT: -- hands the verdict up to me and then I
16 read it.

17 MR. HOTALING: I think that's the more traditional way
18 to handle it.

19 THE DEFENDANT: And one more question. You said it
20 would have to be unanimous?

21 THE COURT: Yes. And one of the things I will do is
22 after the jury is instructed -- I mean after -- after the jury is
23 instructed then I will release the alternate jurors.

24 But I will remind them that they still must not discuss
25 the case or anything because what sometimes happens is that in

1 the course of the jury deliberations you lose a juror.

2 And then if not too much time has passed, an alternate
3 can be recalled and the jury starts from scratch with its
4 instructions.

5 Is that the proper procedure? Am I leaving something
6 out?

7 MR. HOTALING: No. If there were to be the necessary
8 need to impanel an alternate, then deliberations would begin
9 afresh with the newly constituted alternate.

10 THE COURT: If it's a short period.

11 we had a case, where two weeks after the jury had
12 delivered its verdict, it was discovered that one or two members
13 of the jury had criminal records that hadn't been disclosed, and
14 so they were excluded. The jury recalled two jurors.

15 I thought it was too late. That shouldn't -- but I
16 think I was dissent.

17 But if it's just hours or a day or so, then the
18 alternates will be recalled.

19 MR. HOTALING: And you would instruct the jury that they
20 would have to begin their deliberations anew.

21 THE COURT: From scratch.

22 MR. HOTALING: From scratch with the new alternate.

23 THE COURT: So does this cover it, I think?

24 MR. HOTALING: Nothing more from the government.

25 THE COURT: Okay, great. So we will reassemble at 1:30

1 for closing arguments.

2 MR. HOTALING: Thank you, Judge.

3 THE DEFENDANT: Is it okay to leave my coat in here?

4 THE COURT: I'm sorry?

5 THE DEFENDANT: Is it okay to leave my coat?

6 THE COURT: Oh, sure. You can leave anything.

7 (At 12:24 p.m. proceedings recessed to 1:30 p.m.)

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1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4
5 UNITED STATES OF AMERICA,)
6 Plaintiff,) No. 14 CR 447
7 vs.) Chicago, Illinois
8 HAKEEM EL BEY,) March 4, 2015
9 Defendant.) 1:30 p.m.

VOLUME 3
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RICHARD A. POSNER
AND A JURY

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1 (Proceedings heard in open court:)

2 THE COURT: So is there anything we need to discuss
3 before the jury is returned for the closing arguments.

4 THE DEFENDANT: No. We're set.

5 THE COURT: Okay. You can bring them in.

6 (At 1:43 p.m. jury in.)

7 THE COURT: Good afternoon, ladies and gentlemen. Thank
8 you for your presence. Welcome.

9 So we now have two stages left in the trial.

10 First we are going to hear closing arguments from the
11 government and from Mr. El Bey. And then I will give you the
12 jury instructions and then you will begin your deliberations.

13 So is the government ready to proceed?

14 MR. HOTALING: Yes, your Honor.

15 THE COURT: Okay. Mr. Hotaling.

16 CLOSING ARGUMENT ON BEHALF OF THE GOVERNMENT

17 MR. HOTALING: May it please the Court, ladies and
18 gentlemen of the jury, good afternoon.

19 The defendant in this case, Hakeem El Bey, is a tax
20 cheat. He figured out a way --

21 THE DEFENDANT: Excuse me, Judge.

22 THE COURT: No. Please don't interrupt.

23 THE DEFENDANT: Okay. But, Judge --

24 THE COURT: You'll have your chance to make your closing
25 argument.

1 MR. HOTALING: He figured out a way to pull a fast one
2 over on the IRS when he submitted tax returns in the name of a
3 trust that he created and in which he named himself as the
4 trustee and the beneficiary.

5 As part of his -- as part of the scheme that he
6 concocted he submitted six false trust tax returns to the IRS, in
7 each of which he claimed the astonishingly high refund amount of
8 \$300,000.

9 Now, ladies and gentlemen, let's put this in
10 perspective. That's six returns, each of which he claimed had a
11 \$300,000 refund, for a total amount of claimed refunds of \$1.8
12 million.

13 And as you now know, because of the way that the IRS
14 works, they actually paid out on two of those refunds, two of the
15 \$300,000 refunds, for a total of \$600,000: Checks that the
16 defendant accepted, checks that the defendant deposited in
17 special bank accounts that he opened in the name of his trust at
18 Wells Fargo Bank.

19 Money which he then used to go on a months' long
20 spending spree in which he purchased a new house and multiple new
21 cars. His was a fairly simple scheme, but one that netted him a
22 very big payday, all at the expense of the United States
23 Treasury.

24 Now, ladies and gentlemen, before I begin talking about
25 the evidence that we have seen and heard during the course of

1 the trial I want to spend a few moments and talking about the
2 charges that the defendant is facing.

3 Now, as Judge Posner is going to instruct you, the
4 defendant has been charged in what's called an indictment. An
5 indictment is, very simply, the way in which a person is informed
6 of the charges he is facing.

7 The indictment in this case, a copy of which you will
8 have, the defendant is charged in eight separate counts. Counts
9 1 and 2 charge the defendant with a mail fraud scheme.
10 Essentially submitting all of those tax returns to the IRS in the
11 hope of getting all of those refunds.

12 That's Count 1 and 2, mail fraud.

13 Counts 3 through 8 charge the defendant with the crime
14 of filing a false claim with the United States, each one of those
15 six fraudulent tax returns that's been submitted to the IRS
16 claiming those refunds.

17 So -- and something else that I expect that Judge Posner
18 is going to instruct you on, that with respect to those three
19 charges -- or actually all eight charges, but two counts of mail
20 fraud and six counts of filing a false claim -- each one of those
21 offenses has what are called elements, and the government has the
22 burden of proving each one of those elements as to each of the
23 crimes that the defendant is facing beyond a reasonable doubt.

24 That's a burden that rests with the government
25 throughout this entire case. It exists right now, it exists when

1 Mr. El Bey talks to you, it exists until you walk into that room
2 and begin your deliberations a little bit later this afternoon.

3 Proof beyond a reasonable doubt is a high burden, but
4 it's one that we, the government, have met in this case.

5 So let's start talking about the evidence that we have
6 seen and how those mesh up with the offenses that the defendant
7 has been charged. And principally I'm going to spend the bulk of
8 my time with you today talking with Counts 1 and 2, the mail
9 fraud. But I will also talk about the false claim counts,
10 Counts 3 through 8.

11 And as part of that, what I'd like to do is put up on
12 the screen in front of you, it's on the screens in front of you,
13 I'm going to put up what those four elements are for the offense
14 of mail fraud.

15 Now, you should have those all up on the screens in
16 front of you.

17 There are four elements to the offense of mail fraud:

18 Number one, the defendant knowingly devised or
19 participated in a scheme to defraud as described in the
20 indictment.

21 The defendant did so with the intent to defraud.

22 The scheme to defraud involved a materially false or
23 fraudulent pretense, representation or promise.

24 And that the fourth, for the purpose of carrying out the
25 scheme or attempting to do so the defendant caused the use of the

1 United States mails.

2 So those are the four elements that the government has
3 an obligation to prove beyond a reasonable doubt.

4 Now, I would like to now focus -- I want to focus now
5 and drill down a little bit more on the first two elements: The
6 scheme to defraud and the defendant's intent to defraud.

7 And I expect that the Judge is going to give you the
8 following instruction that defines what a scheme to defraud is:

9 A scheme is a plan or course of action formed with the
10 intent to accomplish some purpose, and that a scheme to defraud
11 is a scheme that is intended to deceive or cheat another and to
12 obtain money or property or cause the potential loss of money or
13 property to another by means of materially false or fraudulent
14 pretenses, representations, misrepresentations or promises.

15 That's what a scheme to defraud is.

16 Next, what about intent to defraud? A person acts with
17 the intent to defraud if he acts knowingly with the intent to
18 deceive or cheat the victim in order to cause a gain of money or
19 property to the defendant or another, or the potential loss of
20 money or property to another.

21 So now let's talk about what you've seen and heard
22 during the course of the trial that goes to show that the
23 government has met those two elements beyond a reasonable doubt.

24 And in doing so I'd like to refer back to -- refer you
25 back to the testimony yesterday from Agent Bodner and that flow

1 chart that he testified about that was admitted as Government
2 Exhibit Summary Chart 1. I'm going to put it up on the easel for
3 you today.

4 Ladies and gentlemen, this is the roadmap of the
5 defendant's scheme to defraud as well as the evidence of his
6 intent to defraud.

7 So let's start talking about it. The defendant's scheme
8 to defraud really kicked off and got into high gear in August
9 of 2009. Because that was the days, you heard the testimony from
10 Agent Bodner, Kristy Morgan and Agent Ponzo, that the defendant
11 submitted those three form 1041 trust returns for his trust, the
12 Hakeem El Bey Trust, for tax years 2006, 2007, and 2008.

13 So what was actually, as you heard during the testimony
14 there was lots about those particular returns that were
15 suspicious on their face. And I'd like to highlight a couple of
16 those for you ^are right now.

17 Number one, you heard the testimony from Agent Kristy
18 Morgan regarding the EIN, or the employer identification number,
19 that was assigned and written on each one of these three trust
20 returns.

21 She told you that that EIN number, or that EIN, was
22 assigned to the defendant's trust on August 10th, 2009, a mere
23 four days before the IRS received these trust returns four days
24 later.

25 Now, ladies and gentlemen, there was some sort of

1 suggestion that perhaps the EIN was associated with or that the
2 trust was established at or around the time that the defendant
3 was born. That's -- there is no evidence to support that.

4 This trust was created four days before he submitted
5 these trust returns. The trusts were created simply as the means
6 by which he could facilitate his fraud against the Treasury.
7 Four days before than they were received.

8 Now, what else about those trust returns were suspicious
9 on their face? Well, again, you heard the testimony from Kristy
10 Morgan, and she told you that these three returns, IRS 3 for tax
11 year 2006, IRS 4, the 1041 return for tax year 2007, and IRS 5,
12 the 1041 for tax year 2008, they were all submitted to the IRS on
13 the same day in the same envelope. Three trust returns for three
14 separate years, all submitted on the same date.

15 As Agent Ponzo told you and Agent Morgan told you,
16 that's very, very bizarre. Even the 2000 -- even the 2008 return
17 which was submitted in August of 2009, if it was timely, it
18 should have been filed many months earlier in April of 2009.
19 Bizarre.

20 They were all stuffed together in one envelope, all with
21 the intent to try to get the IRS to pay out on those returns.

22 Additionally, and on top of that, you also heard the
23 testimony from Miss Morgan that at the end of October 2009, so
24 about two and a half months after the IRS received these returns,
25 they sent -- the IRS meaning -- the IRS sent the defendant

1 frivolous filer letters, and you heard -- you saw those up on the
2 screen and you heard testimony about those frivolous filer
3 letters, which told the defendant in no uncertain terms that
4 there was no basis in law for the claims that were contained in
5 his trust returns. He was told flat out by the IRS that these
6 returns were fraudulent.

7 It said it straight on the face of documents. He
8 received these letters directly from the IRS: These returns are
9 fraudulent. And because of that you had a couple different
10 options.

11 Number one, you could file amended returns for these
12 ^particular particular entities, and if you didn't file the
13 amended returns within 30 days you were subject to a \$5,000
14 penalty per return.

15 Now, again, you received those returns -- he received
16 those frivolous filer notices. Did that stop him in ^in any way?
17 Did that deter, did that turn him away from what the scheme was?

18 No. You know that. He kept marching right forward.
19 Because again, after he received those notices, after he mailed
20 them back in December 2009, he filed another false trust tax
21 return, in May 2010 he filed yet another false trust tax return,
22 and then in November 2010 another.

23 Now, ladies and gentlemen, I have been spending a lot of
24 time talking about these three returns. And I just want to spend
25 just a couple minutes talking about the meat of those returns and

1 why those returns were fraudulent.

2 And I'm referring your testimony -- referring you back
3 to the testimony of Agent Ponzo, so he walked through each one of
4 those returns and he showed you exactly why those returns were
5 fraudulent.

6 And what I'm going to put up on the screen for you now
7 is, again, IRS 3, which is the 1041 trust for the Hakeem El Bey
8 Trust for tax year 2006. Now, this return that I'm putting up
9 there is identical in every significant way to all of the other
10 tax returns that we've talked about during this trial, the
11 remaining five that are referred to up here on the board.

12 So what is it about this particular return and all
13 returns that were fake?

14 Well, number one, as you can see on the screen in front
15 of you, they all were filed in the name of the Hakeem El Bey
16 Trust with the defendant listed as the trustee, the same employer
17 identification number, the same date of creation, the same
18 reference to the fact that it's a simple trust.

19 Moving down to the next section, the income section,
20 every single one of these returns claimed the exact same amount
21 of total income: \$900,000.

22 As Agent Ponzo told you, that was very suspicious
23 because even looking at the face of the form itself, there is
24 nothing to document where that \$900,000 comes from. In fact, the
25 only thing that's on this form is a bunch of zeros: 0 plus 0

1 plus 0 doesn't equal \$900,000.

2 For purposes of this return, it certainly did.

3 And as Agent Ponzo also told you, there was no
4 supporting documentation, there were no schedules that showed
5 additional income or capital gains or anything. There was
6 nothing to substantiate that \$900,000 number. It was just pulled
7 out of thin air.

8 Moving down to the next section, the deductions section.

9 Again, on each one of these returns the defendant
10 claimed the same amount of fiduciary fee deduction: \$900,000
11 fiduciary fee deduction, a convenient number because it basically
12 zeros out all of his income: 900,000 deduction, taking away the
13 \$900,000 in income.

14 Now, how else -- now, why do you know that that
15 fiduciary fee deduction number is bogus?

16 Well, as Agent Ponzo again told you, that if it was
17 legitimate, any fiduciary who received that much money had an
18 obligation to claim that money as income on the fiduciary's own
19 trust -- I mean, his own personal tax return.

20 And as Agent Ponzo told you, he went and looked at
21 Hakeem El Bey's personal return, and there is no reference
22 whatsoever to his receipt of almost \$1 million in fiduciary fees.

23 It's not on there.

24 Again, it's a number that he made up. That deduction is
25 a fiction, a fiction that ^you he needed in order to zero out

1 that income, because zeroing out is important because as you move
2 down to the exemption, the \$7,950, Agent Ponzo once again told
3 you the standard exemption for a simple trust like the Hakeem El
4 Bey Trust was \$300, no more, no less.

5 But the defendant jacked that exemption from \$300 all
6 the way up to \$7,950. How? Why? There is no explanation. It
7 wasn't proper. It wasn't legal. Because as Agent Ponzo told
8 you, the number is only allowed to be 300.

9 So with a \$7,950 exemption we move down to the next box,
10 the tax and payment box. And again, ladies and gentlemen, it's
11 the same numbers for every single return in this case.

12 Because he had that \$7,950 exemption, and because he had
13 no tax because it was zeroed out with the \$900,000 income
14 deduction, you have taxable income of a negative number. That
15 means that the trust wasn't subject to any taxes because of the
16 way he was jimmying the numbers.

17 Moving down to the next Box 24-E, he claims \$300,000 in
18 withholdings. Where did that come from? Withholdings from who?
19 Was there a bank that was holding it? Was there an employer?

20 No. There is no document. There is no evidence to
21 support that any entity whatsoever claimed they will be holding
22 \$300,000 in money for the defendant's trust. Again, that's a
23 number that's made up.

24 And that's important because that \$300,000 then
25 transfers down to the very bottom on Line 29, where he is saying

1 he was overpaid \$300,000 and claims a refund in that same amount,
2 \$300,000.

3 Everything, everything, everything about this document
4 is totally made up. He knew it was made up. He knew that that
5 was the way that he could get money, and that's why he filled out
6 the forms in the way that he did; to claim and to get his hands
7 on a refund of \$300,000.

8 And again, to make sure that there is no dispute or
9 there is no question about who actually submitted these returns,
10 again, the defendant, his signature down at the bottom: Hakeem
11 El Bey. His signature is on the bottom of each one of these
12 returns, signed under penalties of perjury, in which he is
13 attesting and certifying to the fact that the IRS, that the
14 information in that return was true, accurate and correct.

15 But we know it wasn't true, accurate and correct. But
16 that was the representation he made to the IRS when he signed
17 these returns in that box.

18 Now, let me reinforce the point again: This return is
19 identical in every way, in every meaningful significant way to
20 all of the other returns in this case.

21 The defendant signed each one of these returns, he
22 claimed the same \$300,000 refund in each one of these returns, he
23 did it on three occasions -- on August 4th -- 14th, 2009, when
24 the IRS received these returns, he did it again on December 8th,
25 when the IRS received yet another return in December for the 2008

1 tax year, he did it again in May of 2010 for the 2009 tax year
2 for his trust, and he did it a fourth time in November 2010 for
3 tax year 2007.

4 He submitted all of these returns with the singular goal
5 of cheating the United States Treasury out of hundreds of
6 thousands of dollars, money that he had absolutely no legal right
7 to.

8 Ladies and gentlemen, that's pretty compelling evidence
9 of both a scheme to defraud and his intent to defraud.

10 But there is more.

11 You know that the IRS did not accept this particular
12 return that was received on August 14th, 2009. He submitted
13 those -- they sent him the fraudulent filer letters. He returned
14 those letters back. But nevertheless, he went another shot in
15 December where he submitted a return in December 2009 which was
16 received on December 8th.

17 Now, this time it was different. You know it was
18 different. Because what happened here, the IRS actually issues a
19 \$300,000 refund check to the defendant's trust one month later on
20 or about January 5th, 2010.

21 And you know what he did with that money. He
22 immediately goes and deposits it -- or shortly thereafter will
23 deposit it -- into one of his special wells Fargo accounts, ^ann
24 account that at the time he deposited it had a negative balance,
25 and the only deposit items that were going into that account were

1 money that he was receiving from his job at the postal service.

2 As you now know, that \$300,000 check that the defendant
3 received was burning a hole in his pocket.

4 So what does he do? Even before he deposits it into his
5 account he goes to Shaffer Hyundai on January 9th and purchases a
6 brand new 2010 Hyundai Genesis for about \$27,000.

7 Once the check is actually deposited into his account,
8 he buys another car, a 2011 Hyundai Sonata for around \$27,000,
9 and then one month later he makes a really big purchase: He goes
10 and negotiates the purchase of a house at 439 Hoxie Avenue in
11 Calumet City.

12 You will have those records back there. You will have
13 those records back there with you in the jury room. You will see
14 a copy of the cashier's check. He went to the bank, Wells Fargo
15 Bank, and went to the title -- he went to the settlement, the
16 closing at Stewart Title, and he paid for that house in cash. No
17 mortgage. In cash. \$120,000.

18 Now again, ladies and gentlemen, this is proof of a
19 scheme to defraud and his intent to defraud. If he has -- if he
20 was going to -- if he was going to cheat the United States
21 government out of hundreds of thousands of dollars, he was going
22 to make sure that he got his money's worth. These were all big
23 ticket purchases that he made in his name, using an account in
24 the name of his trust that he had exclusive control over.

25 Now, seeing the success that he had in January -- excuse

1 me -- in December in connection with this particular check, and
2 after, and also realizing that his money was starting to
3 decrease, because in fact in the 5730 account, by the beginning
4 of April 2010, it was almost down to a thousand dollars. He had
5 whittled the 300,000 down to a thousand.

6 In order to keep his scheme going, he tried it again.
7 He submits yet another trust return to the IRS that was received
8 by the IRS on May 24th, 2010, for tax year 2009 for his trust.

9 And again, as you know, just about a month later the IRS
10 issued a refund check in the amount of \$300,000.

11 Now, I want to stop here and talk for a brief moment
12 about the IRS. Undoubtedly many of you have some questions and
13 it was a question that Mr. El Bey raised on cross-examination:
14 How could it be that the IRS, who sent frivolous filer letters
15 and notices to the defendant in connection with these earlier
16 ones, how could it be that they turned around and allowed these
17 subsequent trust returns to go through and to actually pay
18 \$300,000 in refunds to the defendant?

19 Well, you know the answer, and Kristy Morgan told you
20 what's going on here. The IRS is a very large government agency.
21 She testified that on a yearly basis they process close to 150
22 million personal income tax returns. They process close to 47
23 million business and trust returns.

24 That is a lot of returns. And they don't have the
25 ability to go through every single one of those hundreds of

1 millions of returns and do a hard-scrubbing of each one of those
2 returns.

3 Instead, what they do is they rely on the good faith, on
4 the honesty of the taxpayers who submit their returns to the IRS.

5 When a taxpayer submits that return with that
6 certification under penalty of perjury that it's true, accurate
7 and correct, they rely on that. They have to rely on it.

8 Because it's simply too many returns for them to do the
9 hard push-through and the hard top to bottom look-through that
10 would have caught this return if that was something they had the
11 opportunity to do, but they don't.

12 The sheer volume means that they must rely on the good
13 faith, honest statements and representations of taxpayers.

14 That's why they paid them out.

15 Now, it's unfortunate that they did. There is no doubt
16 about it. But that doesn't excuse the defendant's decision to
17 exploit that, his decision to execute this fraud, his decision to
18 go ^head and submit what he knew to be fraudulent returns
19 exploiting what he knew to be a loophole, in the way exploiting
20 that loophole in the IRS system and he took advantage of it and
21 paid them out.

22 Again, it's unfortunate but it's reality. The way it
23 works.

24 Now, the fact that the IRS paid these things out
25 unfortunately doesn't justify though, A, the scheme that he

1 engaged in, and also all of the significant purchases that he did
2 after he received the money. With that check burning in his
3 pocket again, he went and made a number of very, very big
4 purchases.

5 In August -- in June of 2010 he bought a 2011 Hyundai
6 Sonata for \$26,000, July 9th he purchased another car, a 2010
7 Jeep Patriot for 21 thousand five-four-59, on August 13th he made
8 yet another car purchase for a 2010 Buick LaCrosse. About two
9 months -- about two weeks later, excuse me, August 28th, 2010, he
10 purchased a 2011 Jeep Grand Cherokee for \$36,000, and about a
11 month and a half later he purchased a 2010 Hyundai Genesis for
12 25,107.

13 Ladies and gentlemen, those again, those are all very
14 significant big-ticket purchases that the defendant himself made
15 in his own name.

16 And those are just the big-ticket items.

17 You also heard Agent Bodner testify about that pie chart
18 and all of those miscellaneous withdrawals and expenditures that
19 he had for things like furniture, electronics, jewelry, and any
20 number of different things, and he used all that money he
21 received on personal expenditures.

22 And again, because he was spending so much money so
23 quickly, as you know, down here at the bottom he tried it once
24 again, one last time: He submitted an additional fraudulent 1041
25 trust return for his trust for tax year 2007. It was received by

1 the IRS on November 29th, 2010.

2 Thankfully, as you know, the IRS caught wind of the
3 defendant's scheme. They shut it down and didn't pay the refund.

4 So, Ladies and gentlemen, this is a lot of evidence that
5 goes to the defendant's scheme to defraud as well as his intent
6 to defraud.

7 There is one more piece of evidence I want to touch on,
8 and that is, again, the statement that you heard this morning
9 from Agent Greg Howard. And he told you about the interview that
10 he had with the defendant in December 2010. The defendant
11 voluntarily came to the IRS office, and the agents asked and
12 confronted the defendant with the different tax returns that he
13 had submitted.

14 In the course of that interview, the defendant admitted
15 that he filed those returns, all of them, that he signed those
16 returns, all of them, that he claimed those \$300,000 refunds on
17 all of them, and that he did, in fact, receive those two \$300,000
18 refund checks and deposited them into his Wells Fargo account.
19 All of those were admissions.

20 And then when confronted about the particular face of
21 the return itself, you heard Agent Morgan tell you -- Agent
22 Howard tell you that the \$900,000 income number was another
23 number he basically made up as well as the fact that he never
24 received \$900,000 in fiduciary fees. Again, he made it up.

25 So when you have the defendant's statement, combined

1 with all of the evidence that you have seen and heard, what we
2 have, and so that essentially, ladies and gentlemen, establishes
3 beyond a reasonable doubt the first two elements of the offense:
4 The scheme to defraud and his intent to defraud.

5 Now, I just want to talk briefly about the last two
6 elements.

7 First, that the defendant -- the scheme to defraud
8 involved a materially false or fraudulent pretense,
9 representation, or promise.

10 Now, the misrepresentations that we are talking about
11 here is everything that's in those returns. He used the false
12 information about the total income, the false information about
13 the fiduciary fee deductions, the false information about the
14 exemptions, the false information about the withholdings, the
15 false information about the claimed refund.

16 So that's what we are talking about, the
17 misrepresentations.

18 So the question that we want to talk about right now is,
19 were those material. And Judge Posner is going to define for
20 you -- is going to explain to you that a false or fraudulent
21 pretense is material if it is capable of influencing the decision
22 of the IRS to whom it was addressed.

23 Well, again, I touched on this -- and let me make it
24 clear once again -- the answer to that is yes.

25 Kristy Morgan told you that the IRS relies on the good

1 faith, honest information provided by taxpayers under penalty of
2 perjury when they submit their tax returns.

3 when the defendant submitted his trust return to the
4 IRS, he certified under penalty of perjury that the information
5 was true, accurate, and correct. we know it wasn't, but the IRS
6 was certainly entitled to and did, in fact, rely on that
7 information.

8 we know that they relied on it because, in fact, for two
9 of them, they accepted those returns and paid out \$300,000 in
10 refunds or \$600,000 in refunds.

11 So, ladies and gentlemen, the government established
12 those misrepresentations were material.

13 Finally, the last element for mail fraud, that for
14 purposes of carrying out the scheme, the defendant caused the use
15 of the United States mails.

16 Now, as I mentioned at the very beginning of my opening,
17 there were two counts of mail fraud. Count 1 addresses each --
18 Count 1 addresses one particular mailing, and Count 2 addresses a
19 second.

20 Count 1 addresses the mailing on or about January 5th,
21 2010, of the Treasury check from the U.S. Treasury to the
22 defendant's trust. So this is Count 1, this box right here,
23 Count 1.

24 Count 2 is the June 22nd, 2010, mailing of the \$300,000
25 refund check to the defendant's trust. So this green box,

1 Count 2.

2 So what proof did you hear about the mailings? Well,
3 again, you heard testimony from Kristy Morgan and Agent Bodner
4 who told you that it was the practice of the IRS during this time
5 period to generate paper refund checks for trusts. And you
6 actually saw copies of those paper refund checks during the
7 course of this trial. You saw it was paper because you actually
8 saw the back of the -- the signature endorsements on the back.

9 And they also told you that those particular paper
10 checks were -- it was the practice of the IRS to mail those
11 refund checks to the intended recipients.

12 And again, you know that these checks were mailed
13 because you actually saw on the top of the check the words
14 Austin, Texas, because those checks were generated in Austin,
15 Texas, stuck in the mail in Austin, Texas, and then mailed to the
16 defendant at his residence here in Illinois.

17 That, ladies and gentlemen, is Count 4 and, ladies and
18 gentlemen, that is proof beyond a reasonable doubt as to Counts 1
19 and 2 of the indictment.

20 Now I want to talk about Counts 3 through 8, the false
21 claims counts. A lot of the information I have already talked to
22 you goes to these same ones. We will be able to do these fairly
23 quickly.

24 Again, there are four elements as to the false claims
25 acts for Count 3 through 8.

1 Number one, the defendant made, presented, or caused to
2 be presented a claim against the United States Department of
3 Treasury, the Internal Revenue Service, the claim as materially
4 false, fictitious, or fraudulent. The defendant knew the claim
5 was false, fictitious, or fraudulent and, four, the defendant
6 acted with the intent to defraud.

7 With respect to element one, each one of these
8 particular six fraudulent trust returns corresponds to a
9 different count in the indictment. So we have got a chart that
10 kind of backs that up. You have it in front of you.

11 Count 3 is the August 14th, 2009, Form 1041 for 2006.
12 Count 4 is the second of those returns submitted on August 14th
13 for tax year 2007. Count 5 is the third tax return received on
14 August 14th, 2009, for tax year 2008 for the defendant's trust.
15 Count 6 is the December 8th, 2009, return received by the IRS for
16 tax year 2008. Count 7, May 24th, again.

17 And all of these -- this is Counts 1, 2 and 3, 4, 5 --
18 I'm sorry, 3, 4, 5, 6, 7 and then Count 8, the January -- excuse
19 me -- the November 29th, 2010, tax return for tax year 2007.

20 Each one of those returns, a separate count. We have
21 established that those were submitted and submitted to the IRS.
22 That is element one.

23 Two, the claims were materially false, fictitious, or
24 fraudulent. Again, we have already talked about that, talked
25 about it extensively. You heard the testimony of Agent Ponzo

1 about all the information in those returns and why that
2 information was false and fraudulent.

3 It was material because, again, Agent Kristy Morgan told
4 you that the IRS relied on the information in those claims in
5 deciding whether or not to issue a refund. Element two,
6 satisfied.

7 Three, the defendant knew the claims were false,
8 fictitious, or fraudulent. The defendant admitted it. He
9 admitted it to Agent Howard who told you about that this morning.

10 Also again, like I've already talked about, these
11 returns didn't make sense on their face. They were filled with
12 fake numbers, fake information. He knew that those claims were
13 false, fraudulent, fictitious. Element three, satisfied.

14 And finally, that the defendant acted with the intent to
15 defraud. Everything that I talked about earlier in connection
16 with the intent to defraud element as to the mail fraud counts
17 applies with equal force here to these particular claims.

18 The defendant knowingly submitted those returns, those
19 trust returns to the IRS, all with the singular goal of enriching
20 himself with hundreds of thousands of dollars in refunds that he
21 was simply not entitled to.

22 He did it with the intent to get himself money he should
23 never have gotten in the first place. And, ladies and gentlemen,
24 that is proof beyond a reasonable doubt to all four elements of
25 offense as to Counts 3 through 8.

1 Ladies and gentlemen, during the course of this trial,
2 the defendant's scheme has been laid bare. The defendant
3 submitted tax returns to the IRS claiming hundreds of thousands
4 of dollars, and he did it repeatedly over the course of over a
5 year.

6 Throughout this trial one thing has been made crystal
7 clear: The defendant is a tax cheat, pure and simple. And that
8 is why I am asking, we are asking, the government is asking when
9 you go into that jury room and begin your deliberations, you
10 return the verdict that is consistent with all of the evidence
11 that you have seen and heard during the course of this trial:
12 verdicts of guilty on each and every count of the indictment.

13 Thank you.

14 THE COURT: Mr. El Bey.

15 THE DEFENDANT: Yes, sir.

16 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

17 THE DEFENDANT: Good afternoon, jury. I want to make a
18 little brief --

19 COURT REPORTER: Mr. El Bey, I can't hear you. I'm
20 sorry.

21 THE DEFENDANT: Okay. I'm sorry.

22 I'm going to make a little short statement real quick,
23 and then I will get into detail as to the truth of everything.

24 First, I want to say the government testimony of fraud
25 and mail fraud and anything unlawful hasn't been proven beyond a

1 reasonable doubt.

2 The only thing proven is I spent the funds received from
3 the trust created at birth. So now I'm going to continue now.

4 I have worked 30 years for the government, and I think
5 you all know that if anyone submits forms constantly using the
6 same information, signing their name, they are only doing what
7 they know is legal.

8 I would never do anything fraudulent and get myself in
9 trouble. I wouldn't ask for nothing that I know I couldn't have.
10 I wasn't hurting. I made a good salary at the postal service.

11 So what I want to show you all is that everything that
12 they have said was a lie. It's not true. I never talked to this
13 officer. When I did talk to him, I only talked to him about my
14 knee replacement, which is why I'm off work now.

15 And we only talked about, he wanted to know about
16 anybody else who knew what I was doing. Okay? He wanted to
17 know, did I show this to anyone else.

18 And I'm like, no, I do everything by myself. I say I
19 study law. That's what I do. And everything I do is lawful.

20 And I think you all know that the Internal Revenue
21 Service would not just keep letting you do that without putting
22 you in jail. I know we all know, we file our taxes. I filed my
23 taxes every year. I paid my taxes every year until I realized
24 what I could do. And I did it.

25 And so we talk about those first, the first three tax

1 years that he mentioned: '6, '7 and '8. When I first came into
2 knowledge and understanding that at birth a trust is created for
3 you, and so I used the trust. I looked and I found out what I
4 could do. And I did it.

5 And so they denied me my first three times. And I'm
6 like, okay. So I say, you know what, I have to know. I want to
7 know. I called Internal Revenue Service. I talked with them on
8 the phone.

9 MR. HOTALING: Judge, I'm sorry. This assumes facts not
10 in evidence. There is nothing --

11 THE DEFENDANT: We said we wasn't going to interrupt,
12 Judge. Here we go.

13 So I found out, I talked to agents over the phone. They
14 told me certain things that I could or could not do. So I
15 resubmitted. And when I resubmitted, I received.

16 In the process, as the government is saying with Wells
17 Fargo, you can't get trust money and not put it in a trust. So I
18 opened up my trust and put it in the trust in the name of the
19 trust.

20 And the name of the trust is, it was Hakeem El Bey's
21 trust. I put it in there. And we had to have a trustee on it to
22 disburse the money. So I made myself the trustee, so be
23 responsible for it.

24 So because if you use money the wrong way, you are
25 responsible for it. And as you say, the perjury on the Internal

1 Revenue, we all know about that. But as you saw, I put "ARR,"
2 all rights reserved. That means I reserved my rights.

3 So, but anyway, so I opened the trust and I -- you know,
4 I bought the necessary vehicles to do what I was meant to do.
5 And then I needed the property to continue to do what I needed
6 do, so I bought the house. It's all in the trust.

7 And I bought the house, again, because I'm a minister,
8 and I preach and I teach and I give service on Sundays. So I
9 bought everything.

10 THE COURT: Mr. El Bey, I have to interrupt you. As I
11 said, the closing argument is not evidence.

12 THE DEFENDANT: Okay.

13 THE COURT: You have to confine yourself to the evidence
14 that has been introduced.

15 THE DEFENDANT: Okay, Judge. I'm sorry.

16 THE COURT: There is no evidence about ministry.

17 THE DEFENDANT: I see your point.

18 So anyway, I resubmitted again because as I talk to the
19 Internal Revenue Service agents, they told me that it was lawful.
20 I do anything that's lawful, not legal -- I mean, not legal-wise,
21 but I do everything lawful that the law permits me to do.

22 MR. HOTALING: Judge, I'm going to have to object to
23 conversations that he had with the IRS agents that's not in
24 evidence.

25 THE DEFENDANT: Okay. I been limited all through the

1 trial, but anyway.

2 So anyway, I continued to file again, and I did receive
3 another check. And so I continued to, you know, do what I do.
4 You know, I can't say certain things but, anyway, I continued to
5 do what I was born here, put here to do.

6 And so anyway, I submitted and submitted six times. And
7 it's all lawful. I wouldn't have done it if I wasn't instructed
8 and told it was legal by an agent. So what I did was lawful and
9 so --

10 MR. HOTALING: Judge, I can't --

11 THE DEFENDANT: So I --

12 MR. HOTALING: Judge, I'm sorry.

13 THE COURT: Let him finish his sentence.

14 THE DEFENDANT: So anyway, you know, I was -- okay. I
15 can't say that because he say I can't say. I don't want to get
16 burnt up the wrong way.

17 But anyway, what I did, after I filed -- and I talked
18 with the IRS agents. Actually when they came to my house, he
19 left a card, and I wasn't there at the time.

20 So I called him and I said: I see you left a card at my
21 house.

22 He said: I did. He said: I just want to talk to you
23 about something.

24 I said: That's no problem.

25 He said: When will you be free?

1 I said: well, probably Friday. I said: I have a
2 funeral to attend but I --

3 THE COURT: well, Mr. El Bey, I don't think this is --

4 THE DEFENDANT: Okay. Okay. I'm just trying to let
5 them know what our conversation was, me and --

6 THE COURT: Well, I know, but that's testimony.

7 THE DEFENDANT: Oh, okay. I'm sorry.

8 But anyway, I went and saw him. And when we talked, he
9 asked me about -- he only asked me about the 1099 OIDs, and I
10 told him -- he asked me this. But anyway, I'm going to get on
11 this.

12 I passed you all a sheet here, and the sheet was, it was
13 an overpayment the IRS sent to me and told me: Hey, so one of
14 your trusts, you made an overpayment. So what we did, we applied
15 it to your 2009 trust.

16 And I said: oh, okay. No problem.

17 So my point to you all is, if I did anything illegal,
18 why did they send this to me and tell me that I had an
19 overpayment? If they didn't know what I was doing was legal, why
20 did they tell me this was legal?

21 IRS don't make those kind of mistakes. And you all know
22 they don't. It's they coming to get it or they going to shut
23 your bank account down. They not once shut my bank account down.

24 So what I'm saying to all is, I know you're all not
25 buying this because that's not true. Why would they send me

1 \$600,000 and you think they don't know it? That's not true.
2 They are not going to send me \$60 and don't know it.

3 So my point to you all is, you know, then they tell me
4 this is mail fraud. Mail fraud, in the way he described it, is
5 he said, I sent it through the mail. okay. So whatever you send
6 through the mail, if you don't cancel it out, it's fraud.

7 But I didn't send it. I sent it through -- I took it to
8 the mail. The postal service stamped it. Anytime you got a red
9 stamp and it's not cancelled out, it could be mail fraud.

10 So if they want mail fraud, they couldn't get me for it,
11 they have to go to the postmaster general because he the one that
12 did it. The postal service supposed to know what they do. I
13 work for them. I know what they do.

14 They supposed to cancel out that stamp and make it
15 black. So if they didn't do that, then it's not on you, it's on
16 the postal service. The postal service is very powerful, and you
17 really need to look into them.

18 And so, but anyway, jury, what I'm trying to tell you
19 all is this: I didn't do anything illegal. I don't hurt nobody.
20 I don't have a record.

21 My thing is this. I'm going to do everything that's
22 lawful because I'm -- you know, I done got old now. I'm not
23 trying to hurt nobody.

24 So that's my speech.

25 THE COURT: Okay. Thank you, Mr. El Bey.

1 Mr. Hotaling, do you have any rebuttal?

2 MS. MALIZIA: we have brief rebuttal, your Honor.

3 THE COURT: Excuse me?

4 MS. MALIZIA: we have a brief rebuttal.

5 THE COURT: okay.

6 REBUTTAL ARGUMENT ON BEHALF OF THE GOVERNMENT

7 MS. MALIZIA: The defendant realized what he could do,
8 and he did it. And what he did was defraud the IRS.

9 He made up a bunch of bogus numbers, put them on tax
10 forms six separate times, and he sent each of those forms to the
11 IRS.

12 And he knew exactly what he was doing, ladies and
13 gentlemen, because after he sent in the first three of those
14 returns, the IRS told him there was no basis in law for any of
15 his claims for a \$300,000 refund. They actually told him what he
16 had done was frivolous and false. But he did it again.

17 And when he got that first refund check, what did he do?
18 He deposited it in his bank account knowing that what he put in
19 those forms was false. Knowing that they had no basis in law, he
20 deposited that check in his account, and he spent it. And then
21 he did it again and got another check, and then he did it again.

22 That's what the defendant did. He realized what he
23 could do, he got away with it twice, he committed fraud.

24 I want to emphasize: You have heard the Court instruct
25 you several times throughout these proceedings about what is

1 evidence. And what the Court has told you, and what I expect the
2 Court will tell you again today, is that it's not what the
3 parties ask the witnesses. It's not what they say in opening
4 statements or closing arguments. It's not what I am telling you
5 now.

6 It is the testimony you heard from the witnesses, and
7 it's the documents that have been admitted into evidence. And
8 when you are deliberating in that jury room, that is what you
9 should rely on along with your common sense.

10 Thank you.

11 THE DEFENDANT: Your Honor, can I do one more rebuttal?

12 THE COURT: No. It's just a rebuttal for the person who
13 has --

14 THE DEFENDANT: Well, there's two against one, your
15 Honor. I should get the last word. I should get another
16 rebuttal. I haven't been able to get anything else.

17 THE DEFENDANT: Your Honor, can I do one more rebuttal?

18 THE COURT: No. It's just a rebuttal for the person who
19 --

20 THE DEFENDANT: There is two against one. I should get
21 the last word. I should get another rebuttal. I haven't been
22 able to get anything else.

23 THE COURT: No. I'm sorry. I can't.

24 I want to talk to the jury now. So we have reached the
25 point at which your role becomes absolutely critical, and I'm

1 going to give you the instructions on the law. You are going to
2 apply the law to the facts.

3 But I just want to say one introductory rule.

4 Now, Miss Malizia was correct when she said there is a
5 difference between evidence and what the parties argue. The
6 argument is to try to put the evidence together and explain why
7 the evidence supports one side or the other. And that's entirely
8 proper.

9 But the argument is not evidence.

10 Now, of course it's difficult to, sometimes to try to
11 draw these distinctions.

12 So when you think about what you've heard in these
13 closing arguments, you must distinguish between what you heard,
14 which was commentary on the evidence by both sides, and what may
15 have lapsed over into actual, you know, testimony: saying things
16 that weren't part of the evidence that could have been presented
17 as evidence earlier, but weren't, and so they can't be
18 considered.

19 So you heard, you know, a mixture.

20 Okay. So now I'm going to read the instructions which I
21 have discussed with the parties and taken their criticisms, and
22 revised them, and so on.

23 And just to repeat: This is the law that you will
24 accept for purposes of your decision.

25 Now, I might make a mistake, which could be correctable

1 by a higher court, but for your purposes you will assume I am
2 telling you the straight truth about the law.

3 Now, the instructions are in two parts: The longer part
4 is just instructing you about the legal principles. The very end
5 of the instructions are just some procedural things about how the
6 deliberations work and a verdict form that you have to fill out.

7 So I begin with the law.

8 And by the way, you will have a copy of the instructions
9 in the jury room when you deliberate, so you don't have to try to
10 memorize or take notes of what I'm saying.

11 So you are the judges of the facts, right? You can
12 decide who is telling the truth and what really happened, and so
13 on. But you also apply the law to the facts, because you have to
14 do that to get an actual conclusion. Facts won't give you a
15 bottom line. So you'll -- I give you the law, you find what the
16 facts are, you make your decision what the facts are, and then
17 you apply the law that I have given you to the facts to derive a
18 verdict.

19 Now, remember, your role is a judicial role. You are
20 judges, like me, but slightly different responsibilities, and we
21 try -- and you should try to, you know, be completely impartial
22 and don't let, you know, personal sympathies, likes, dislikes,
23 prejudice, public opinion influence you. And of course, you
24 don't let a person's race, color, religion or ethnic origins, or
25 whether male or female, obviously that's completely irrelevant.

1 And you shouldn't think that I have expressed or taken
2 any view on this. I respect your domain, which is to issue the
3 verdict, and I'm not trying to influence you in any way.

4 And you've heard that the defendant was indicted, which,
5 as Mr. Hotaling explained, it's a form of charging a person with
6 a crime. And this indictment charged -- and the indictment will
7 be, you'll have access to that, if you're interested, also in the
8 jury room.

9 So the indictment charges, as Mr. Hotaling was
10 explaining, mail fraud, which relates to the two \$300,000 checks
11 that Mr. El Bey received from the Internal Revenue Service, but
12 also presenting false claims which were other -- his other
13 submissions, where he asked for the 300,000 and the IRS did not
14 pay.

15 So two separate types. Both -- they are both crimes.
16 They are slightly -- they have slightly different elements.

17 The indictment is just a charge. It's not evidence of
18 any sort, doesn't mean the defendant is guilty. It's just the
19 way these criminal proceedings get started.

20 And in fact, the defendant is presumed innocent of all
21 the charges, and you continue to think about that presumption
22 right through your deliberations.

23 And you can't convict him unless you decide from the
24 evidence that the presumption of innocence has been overcome,
25 that there is by proof beyond a reasonable doubt that the

1 defendant is guilty of either or both types of charge.

2 There are eight separate counts. Your verdict will have
3 to go through count by count. You can acquit of some, convict of
4 some, convict of all, acquit of all.

5 I emphasize that this burden of proof beyond a
6 reasonable doubt, the burden is always with the government
7 throughout the trial.

8 The defendant is not required to prove his innocence.
9 In fact, he is not required to present evidence. He is not
10 required to say anything if he doesn't want to. The burden is on
11 the government.

12 Now, I had said at the beginning that you should not do,
13 you know, independent research: television, radio, the Internet,
14 talking to friends, family, and so on. This is your judgment to
15 make.

16 And so I'll just repeat that: that your decision should
17 be based only on what you saw and heard here in the courtroom,
18 and that included the testimony under oath of witnesses, the
19 documents -- the exhibits, we call them -- that I allowed into
20 evidence.

21 And to repeat: The statements, arguments, objections,
22 and so on, they are not evidence. They are part of the
23 procedure, but they are not the evidence that you weigh when you
24 decide on a verdict.

25 And similarly, the lawyers, their questions, their

1 objections, their opening and closing statements, that's
2 argument, that's not evidence.

3 There have been occasional objections to questions that
4 were being asked. Objections are a permissible form of
5 participation in litigation by the lawyers, the parties.

6 And if I sustain an objection, and you -- you know, you
7 forget about it, there is no testimony that's been objected to.
8 I mean, if I sustain an objection you don't listen to any
9 testimony that was objected to. It's excluded.

10 Now, when you are considering the evidence and trying to
11 determine what the facts are, you're not going to have one piece
12 of evidence, you're going to have a fair amount of evidence to
13 consider.

14 You have to weigh it, decide what is believable, more
15 believable, less believable, and in doing that you are going to
16 have to use common sense.

17 You make decisions. We make decisions many times a day.
18 And we are doing it on a kind of weighing basis, the good versus
19 the bad of this decision.

20 Should I eat another chocolate sundae? Well, it will
21 shorten my life a little, but it will make me happy. Right? So
22 you weigh those two and you decide whether to have the chocolate
23 sundae.

24 And similarly, in a much more serious setting,
25 obviously, you will be weighing the pros and cons of the various

1 bits of evidence.

2 Now, when you hear evidence given, often, you know, you
3 might draw an inference from it. The evidence is -- well, in my
4 chocolate sundae example. okay, I know what a chocolate sundae
5 is, I know what it tastes like, I can also maybe draw an
6 inference: If I eat this a chocolate sundae, not really good for
7 me, right?

8 So drawing inferences from facts is legitimate.

9 And sometimes the lawyers distinguish between direct
10 evidence and circumstantial evidence, but I'm not sure how useful
11 that is, but there is sort of basic evidence. My example: You
12 see the chocolate sundae, but you might draw inferences from
13 that; from the circumstances, you might learn something more than
14 just that it was a chocolate sundae.

15 You don't have to count up the witnesses and decide that
16 if five witnesses testify on one thing and another to the
17 opposite that the five are right. Crowds can make errors.

18 So you want to assess each witness individually, whether
19 you think that person is believable.

20 And I said earlier, there was no burden of proof on the
21 defendant.

22 So a defendant doesn't have to testify, he doesn't have
23 to put in as much testimony as the prosecution. Of course, zero
24 is a lot less than the prosecution presented. But the fact that
25 there is less, fewer witnesses on one side or the other, that's

1 not a decisive consideration.

2 It's what the testimony of all the witnesses on one side
3 add up to versus what the witnesses said on the other side and
4 how that adds up.

5 You don't have to believe everything that a particular
6 witness testified. You may think that witness is wrong about
7 something, right about something else. Well, that's fine. You
8 consider the right and the wrong separately.

9 When you're assessing a witness, you'll want to consider
10 such things as does this seem like an intelligent person, a
11 knowledgeable person? Did the witness really have the ability
12 and opportunity to see, hear, know the things that he testified
13 to? Does he seem to have had a decent memory? Did he seem --
14 that's a plus, if he or she has a good memory.

15 But, on the other hand, did the witness give you the
16 impression maybe he had some kind of prejudice or other reason to
17 slant his or her testimony, not tell the truth?

18 And also sometimes other evidence that's been presented
19 will help you assess what a particular witness testified to: Did
20 it hang with what other witnesses have said, or was it out in
21 left field?

22 I think you heard, or perhaps it was just simply
23 obvious, that the government's witnesses -- and it may well be
24 Mr. El Bey's witness -- that the lawyers had talked to these
25 witnesses before trial. You know, find out what they want to

1 say, and so on.

2 That's proper. There is no impropriety there.

3 You know, you have heard testimony from these -- from
4 one of the special agents, I guess Mr. Howard, about a
5 conversation he had with the defendant, and the agent was
6 entitled to testify about what Mr. El Bey said to him.

7 But you have to make your own decision whether you think
8 the agent was truthful in representing what Mr. El Bey had said.

9 You will remember that some charts that were summaries
10 of evidence, to try to make things a little clearer, were
11 admitted into evidence. So they are evidence, and you can
12 consider those charts and give whatever weight you think
13 appropriate to them.

14 I know some of you have taken notes during the trial,
15 which is entirely proper. And, you know, you can use the notes
16 in deliberations to, you know, help you remember what happened,
17 which is fine.

18 But you don't want to use them as evidence, you know.
19 Because they are just really to try to stimulate your memory.
20 You want to make sure that you are remembering accurately.

21 It's difficult to take notes, and often one writes down
22 something that doesn't quite coincide with what one implies.

23 There was a fair amount of discussion about dates, dates
24 on which forms were mailed, and so on. And the indictment,
25 you'll see, doesn't try to specify dates, in general. Maybe some

1 of them. But it will say some crime occurred on or about a
2 particular date. So the exact dates are not critical.

3 Now, obviously the years are important and months may be
4 important, as you think about the case. But, you know, little
5 mistakes may have occurred about a particular day. And if you
6 know you're in the general time period that the witnesses were --
7 that the case involves, that, you know...

8 It's important in most criminal cases -- and certainly
9 this criminal case -- that anything the defendant is accused of
10 doing, doing wrong, and so on, is something that he -- that he
11 did knowingly. That is, he knew what he was doing and it wasn't
12 just ignorance, mistake, accident.

13 People do misspeak, and they make mistakes, and they are
14 not ordinarily -- or not in this charge -- they are not, can't be
15 punished for their mistakes, but only for what they do with
16 knowledge.

17 Now, a mistake may be the launching pad for some
18 deliberate falsehood. That is, you may mistakenly think that you
19 can lie in a courtroom, right? That -- the fact that the mistake
20 gave rise to your lying doesn't mean you weren't lying, and lying
21 can be an important element of a crime.

22 Now, with regard to the mail fraud charge, that is, the
23 charges relating to the \$300,000 refunds that he received, you'll
24 have to -- you'll have to decide whether the government proved
25 each of the following elements beyond a reasonable doubt.

1 It's not enough they proved one. They have to prove all
2 four.

3 So one is that the defendant knowingly devised or
4 participated in a scheme to defraud to get that, the \$300,000
5 check; that he did so with the intent to defraud; and that the
6 scheme to defraud involved a materially false or fraudulent
7 pretense, representation, or promise.

8 That's very important, that notion of materiality.
9 Because if you -- sometimes people will lie, for example, out of
10 embarrassment. You know, someone asks your age, you knock a
11 couple of years off, or something like that.

12 That would -- those are not -- those little white lies,
13 those are not material falsehoods. They don't -- I mean, they
14 may embarrass you when it's discovered, but they're not -- that's
15 not wrongful conduct.

16 It's when, with specific reference to our case, if
17 you -- if you tell -- if you tell the Internal Revenue Service a
18 lie which is capable of getting them to do something which they
19 would never do if they knew the truth, namely, give you \$300,000
20 to which you're not entitled, that is a material falsehood.
21 That's fraud. And that is an element of the charges.

22 And the last thing with regard to these counts involving
23 the \$300,000 is that in order to carry out the alleged scheme the
24 defendant used the mails or caused the mails to be used in the
25 way in which is described in the evidence you've heard.

1 So it doesn't mean he has to mail a letter himself, but
2 he has to, you know, get the mail service involved by his
3 application, and so on, receipt; his correspondence with the
4 Internal Revenue Service involves his use of mails.

5 So if you find that all these elements are present, that
6 they have been established beyond a reasonable doubt, then the
7 conclusion will be that he did violate the mail fraud statute and
8 therefore he is guilty.

9 But you have to be confident of each of these elements,
10 you know, beyond a reasonable doubt.

11 And if not, then he is not guilty.

12 I also I made -- I guess the indictment and I think the
13 lawyers have made reference to the term of "a scheme." A scheme,
14 plan, it's all the same thing. It's connected with the fact that
15 the kind of fraud that's illegal is a deliberate act.

16 So you're thinking about, you know: How am I going to
17 get X from Y? Something like that.

18 It's intentionally cheating to obtain money or property
19 or impose a cost, a loss on somebody else, using, you know,
20 materially false statements.

21 Now, with regard to the last six counts, there
22 the -- there no money passed to Mr. El Bey. So, nevertheless,
23 the charge is that there was a scheme to defraud. It didn't
24 succeed with regard to those other requests that he made for
25 refunds, but nevertheless they were attempts to obtain something

1 he wasn't entitled to. That's the charge.

2 And what's important for you to understand about these
3 false claim charges, it's not necessary that the false claim have
4 had any effect, had any consequence. All that's necessary is
5 that it was intended to get for the applicant, the -- for the
6 refund, something he wasn't entitled to.

7 So, in other words, you want to understand that a scheme
8 to defraud is illegal even if it's unsuccessful.

9 And each time, if you use the mail to try to defraud,
10 then each time you use the mail that's a separate violation,
11 separate offense.

12 I'll be a little more specific about the false claim.

13 You have to find -- again, beyond a reasonable doubt --
14 that the defendant didn't make, you know, present or cause to be
15 presented a claim, a claim to the Internal Revenue Service, a
16 claim that the Internal Revenue Service owed the defendant money.

17 And you have to find the claim -- again, beyond a
18 reasonable doubt -- was materially false, the way I explained, or
19 fictitious or fraudulent -- they are synonyms -- but you have to
20 find beyond a reasonable doubt that the defendant knew that and
21 knew he was making a false or fraudulent representation to get
22 money to which he wasn't entitled, and so that he was acting
23 intentionally to defraud.

24 And again, as with the four elements of the mail fraud
25 charges, if you find any one of them the government has failed to

1 prove beyond a reasonable doubt then you should acquit.

2 There have been criticisms of the Internal Revenue
3 Service for allowing this to happen. And Mr. Hotaling noted that
4 in his closing argument.

5 The fact that maybe the Internal Revenue Service, if it
6 had more resources, more agents, what have you, it might have
7 prevented any of this from happening, well, I suppose it wouldn't
8 prevent the applications, but if maybe, as I say, they were
9 better funded, better organized, better administered the Internal
10 Revenue Service would not have given Mr. El Bey anything, that
11 doesn't bear on his guilt or innocence.

12 Because, I mean, there are a great many crimes that
13 would not occur if the victim were more cautious, right?

14 So if you go to the toughest neighborhood in Chicago and
15 decide to take a stroll at 3:00 a.m. and you're attacked by
16 someone, beaten up, you're a fool for having been there and
17 exposed yourself to this person. But the person who attacked you
18 is guilty of a crime.

19 So you don't blame the victim for the crime, even if you
20 think the victim was careless. And -- okay.

21 You want to be -- as you deliberate you want to be
22 clear. So the defendant is charged with eight separate crimes,
23 and you don't want to -- you want to consider each of them
24 separately. You don't want to say: Well, if he is charged with
25 eight crimes, he must be guilty of one of them. You know, you

1 don't want to think that.

2 The government could well charge someone with a whole
3 bunch of crimes and not be able to prove any of them beyond a
4 reasonable doubt. That can happen. So the mere number of crimes
5 makes more work for you, you have to think about all of them, but
6 it doesn't bear on his guilt or innocence.

7 Okay. So those are the rules of law.

8 And now just a few little procedural things about your
9 deliberations.

10 So once you're in the jury room the first thing you need
11 to do is to choose a -- used to be called a foreman of the jury,
12 but now we call it foreperson since obviously it can be a man or
13 woman. It's irrelevant. So you choose that.

14 You know, maybe you'll agree on one person, or maybe
15 you'll elect a person, or -- but in any event, you want to choose
16 a person. And this person is just sort of the chairman, just to
17 keep things going. He doesn't -- he or she doesn't have an extra
18 vote or anything of that sort.

19 Just that because there are going to be 12 of you --
20 we'll have to excuse the alternates at the end of my little
21 talk -- you know, you could say you have 12, but you can't talk
22 all at once, so you want to have one person who will, as I say,
23 be the chair. Not having any more influence or, you know, any
24 more authority than the rest. Just a chairman.

25 And also the foreperson has one more duty, and that is

1 when you have a verdict the foreperson will write out what the
2 verdict is and hand it to me and then I read it out loud.

3 Now, when you are deliberating, when you start
4 deliberating, remember, you are just talking to each other, you
5 are not talking to anybody else. No, you know, using your
6 cellphone to go cruising the Internet looking for interesting
7 discussions of the post office or the Internal Revenue Service or
8 anything of that sort. So just -- just by yourselves.

9 Now, occasionally a jury gets kind of stymied, and maybe
10 it's some critical issue it doesn't feel it understands. If you
11 feel that you really need to get an answer to some question from
12 me before you can proceed, then either the foreperson or another
13 member of the jury should write me a note and sign it and send it
14 to me, and I will respond either in writing or by calling you
15 back into the courtroom.

16 And after you send me the note, you don't have to stop
17 everything waiting for me to answer. You can continue with your
18 deliberations.

19 So you'll have, as I said, you have the indictment.
20 You'll have the, all the exhibits.

21 Oh, there is one important thing about the -- if you do
22 send me a note asking a question or expressing a concern of some
23 sort. You're not supposed to tell me if you've taken a vote -- a
24 tentative vote, presumably, if you have a question for me -- but
25 if you've taken a vote don't -- you're not supposed to reveal

1 what that tentative vote is. That's a secret.

2 The only thing that -- the only thing that counts for
3 the verdict is a -- you know, telling me that it was a unanimous
4 determination by the jury either to acquit or to convict or on
5 particular terms.

6 Now, the verdict is in a -- is a form that is filled
7 out. It's a very, very simple form, which you'll get. So what
8 it says is:

9 Count 1. We, the jury, as to Count 1 of the indictment
10 find defendant Hakeem El Bey guilty or not guilty.

11 So there is a little box beside "guilty" and one beside
12 "not guilty," and you just check it.

13 Count 2, they are identical, just the reference to the
14 counts.

15 And then it's signed by everybody. So it's unanimous
16 and it's dated and it's given to me.

17 And, okay, there are 12 of you so you have, you know,
18 you are different people. You will -- you should make a very
19 serious effort, try to reach a verdict, try to agree.

20 You may start off with very different views, but most of
21 the time the jurors, taking as long as they want to discuss the
22 case, will come up with a unanimous agreement. And, you know,
23 it's desirable, because if it's not unanimous then this is no
24 verdict.

25 So I'm just going to ask the lawyers and Mr. El Bey to

1 talk a little at sidebar so they can tell me if I've left out
2 something which I should have told you.

3 So this will just be brief.

4 (Proceedings heard at sidebar:)

5 LAW CLERK: We can either talk to you or I can say it in
6 front of the parties. It's up to you.

7 THE COURT: Okay. Secret.

8 (Pause.)

9 THE COURT: Well, my law clerk reminded me that there
10 are six false claim charges, not four.

11 MS. MALIZIA: That's right.

12 THE COURT: So I was just mentioning the ones that
13 failed. But the ones that succeeded were also false, is that
14 correct?

15 MS. MALIZIA: That's correct.

16 THE COURT: So I should tell them that there are eight
17 charges altogether: two mail fraud and six false claims?

18 MR. HOTALING: Yes.

19 THE COURT: The two false claims that succeeded and the
20 four that failed.

21 MR. HOTALING: And, Judge, our recommendation is that we
22 not get into which ones are alleged to have been succeeded, and
23 what -- I really worry -- just six false claims, yes.

24 THE COURT: But I should mention -- but I do want to
25 tell them that two of those are also the mail fraud claims. I

1 don't want them to forget about the mail fraud.

2 MR. HOTALING: Well, no, the mail fraud is the whole
3 thing. It's not just -- I mean, the two executions are the two
4 particular mailings that are in Counts 1 and 2, but the mail
5 fraud scheme encompasses everything. And so --

6 THE COURT: You mean there are six counts of mail fraud?

7 MR. HOTALING: No, there are two counts of mail fraud
8 corresponding to the two mailing executions; that the IRS mailed
9 those two checks on those two dates. That's how we charged the
10 executions.

11 THE COURT: But I don't know what you mean by whole
12 scheme?

13 MR. HOTALING: Everything. All six returns are part and
14 parcel of the scheme.

15 THE COURT: But he is not being charged with mail fraud
16 for the four that failed.

17 MS. MALIZIA: But it's part of the scheme, though, along
18 with the purchase of the vehicles and house, it's all part of the
19 scheme.

20 THE COURT: Does that make a ninth count?

21 MR. HOTALING: No.

22 MS. MALIZIA: No, it's all part of the first two counts.

23 The first count alleges the scheme itself and its goals,
24 and encompassed in that scheme is all six of the false returns.
25 But to execute that scheme he caused two mailings. The two

1 Treasury checks were mailed to him in furtherance of the scheme.

2 THE COURT: I see. So what should I say?

3 MR. HOTALING: I think, Judge, just simply say that
4 there are six -- you have already said it -- there are two counts
5 of mail fraud and there are six counts of mailing a false claim.

6 If there is a concern that is what you might have said
7 earlier, just simply clarifying that there is six counts, and
8 just leaving it at that.

9 THE COURT: Okay.

10 MS. MALIZIA: I think there was an instruction on how
11 the jury should not consider any potential punishment of the
12 defendant that maybe was skipped over in your charge.

13 THE COURT: It's not in what I have.

14 MR. HOTALING: We didn't get a copy of the ones you were
15 reading from.

16 LAW CLERK: It should be in there.

17 There you go, Mr. Fuentes, Mr. El Bey.

18 MR. HOTALING: Right there.

19 LAW CLERK: It's on Page 26, Judge.

20 MR. HOTALING: Page 26.

21 THE COURT: I mean, it's certainly true. Does it get
22 them thinking about it?

23 MS. MALIZIA: I think --

24 THE COURT: What do you think is the psychological
25 effect?

1 MS. MALIZIA: The psychological effect is to the extent
2 that they are concerned that he may or may not go to jail is
3 irrelevant to their determination of his guilt. That is up to
4 you to decide.

5 THE COURT: I know that's correct. I'm just asking
6 whether you think it is --

7 MS. MALIZIA: It should not enter into their
8 deliberations:

9 If we convict this guy, will he go to jail?

10 what is the potential consequences of this?

11 Should we really do it if we think they are going to
12 lock him up for 20 years?

13 That should not even enter into their deliberations.

14 THE COURT: Okay. Anything else?

15 MR. HOTALING: And, Judge, I think just we would ask --
16 and it very well could be that I missed it -- but when you were
17 going over that very last instruction, that Silvern
18 instruction -- that's S-I-L-V-E-R-N -- I think you might have
19 missed the component that it was required that they come back
20 with a unanimous verdict, the very first sentence.

21 So I think my recommendation, Judge, is that perhaps we
22 could just -- this is a pretty significant instruction -- and we
23 would, I think our request would be that you read that verbatim.

24 THE COURT: Well, I told them about making a reasonable
25 effort.

1 MR. HOTALING: Well, no, but the fact that it has to be,
2 that their verdict must be unanimous.

3 THE COURT: I thought I said that. I'll say it again.

4 MR. HOTALING: Maybe I missed it.

5 THE COURT: I mean, I think I said it, but I'll say it
6 again. If you missed it some of them may have missed it. That's
7 fine.

8 MR. HOTALING: Mr. El Bey, do you have anything else?

9 THE DEFENDANT: No.

10 THE COURT: Yeah. Anything, Mr. El Bey?

11 THE DEFENDANT: No.

12 THE COURT: Okay.

13 (Proceedings heard in open court:)

14 THE COURT: After discussing, after asking the
15 government lawyers and Mr. El Bey if they had any suggestions or
16 corrections in what I told you, they made some suggestions and
17 which I will add.

18 First, I made a mistake because I gave you the
19 impression that there are six charges: two mail fraud and four
20 false claim.

21 The two mail fraud being the two \$300,000 checks that
22 he, Mr. El Bey, received; and the four false claims being the
23 \$300,000 refunds that he sought but that the Internal Revenue
24 Service didn't give him, so that they were attempts.

25 Now, my mistake was that the first two counts which are

1 for the two checks he received, they are also being charged as
2 false claims. So they are mail fraud because through use of the
3 mail, you know, he got all this money, but they are also -- they
4 are also false claims.

5 So you can have a false claim that succeeds in the sense
6 that you get the money you asked for, it's still a false claim,
7 and that's a separate crime from mail fraud.

8 So when he didn't get anything he couldn't be -- when he
9 didn't get anything, that is four of the -- no, let me see.

10 Yeah, there were six false claims and there
11 were -- there were six false claims; that each effort that he
12 made to obtain the \$300,000, that is charged as a false claim.

13 So we have six separate false claims.

14 But the two that succeeded where he got the \$300,000,
15 they are also mail fraud counts. So that makes a total of eight
16 charges. And the -- although I managed to scramble it, the jury
17 verdict form that you'll be getting is perfectly clear with it's
18 eight counts. So I apologize for that.

19 The other thing I think I said, but maybe I missed it,
20 you know, to bring -- to render a verdict, whether it's acquittal
21 or conviction, it has to be unanimous: All 12 jurors have to
22 sign it.

23 Otherwise, it's -- you don't have a verdict. You know,
24 you can -- if after protracted deliberations, and maybe
25 additional instructions from me, you might decide you just have

1 irrep- -- incurable disagreements, and you can't render a
2 unanimous verdict either way.

3 That happens occasionally. It's quite rare. It's
4 unfortunate, but it can happen.

5 So I just want you to understand that to bring back
6 either verdict, acquittal or conviction, you have to have
7 unanimity, which means everybody signing in his place.

8 So another thing that I think you are aware of
9 already -- but I'll just remind you of it -- so your duties cease
10 when you render the verdict. The verdict is guilt or innocence.
11 It's not the punishment.

12 So if a defendant is acquitted, then of course he goes
13 free, that's the end of it. If a defendant is convicted of a
14 crime, then there is a separate later sentencing proceeding.

15 But the sentencing proceeding is entirely conducted by
16 the judge and it's the judge who decides on the sentence. So
17 there is no jury involvement in the punishment phase of a
18 criminal proceeding. So you don't have to worry about that at
19 all.

20 So that I think does it.

21 The only other thing I have to do -- I'm sorry to do --
22 is to excuse the two alternate jurors, because the jury has to be
23 12, it can't be 14.

24 In excusing you -- this is Miss Chiappa and Miss
25 Shoopman -- in excusing you, though, there is an important

1 qualification, and that is suppose something happens in the next
2 day or so that -- or whatever -- or this afternoon it could
3 happen, suppose one of the 12 jurors gets ill or something
4 happens and leaves the jury with only 11 people.

5 well, if this -- if the loss of a juror or two jurors
6 happens very shortly after the completion of the trial, then I
7 would be allowed to call back one or, if necessary, two of the
8 alternates, then the jury deliberations would start over from
9 scratch.

10 So that it would give the alternate or alternates a
11 chance for a complete -- not just: we've decided x, what do you
12 think? But for a complete redo of the jury decision.

13 So for that reason the alternates should continue to
14 maintain confidentiality, that is, not talk to anybody, do any
15 research or anything that would add to your knowledge or might
16 distort your knowledge of the trial.

17 So although you're dismissed as of now, you will not
18 participate in the jury deliberations, you are still a part of
19 the jury process.

20 And as soon as there is a verdict, you'll be notified
21 and then you will be free.

22 And probably there won't be any, you know, last-minute
23 loss of one of the 12 jurors, but there is this possibility, and
24 the issue has arisen occasionally in previous cases.

25 Okay. So thank you very much. So thank you, Miss

1 Chiappa and Miss Shoopman again.

2 And I'd like the jury to be taken to the jury room for
3 their deliberation, and they have all their documents and the
4 binders and everything.

5 Is there anything more?

6 MR. HOTALING: No, Judge. And obviously we will
7 facilitate getting the exhibits back to the jury through the CSO
8 as soon as they are back.

9 THE COURT: Yes. Is there anything else we need to
10 discuss?

11 LAW CLERK: Here is two copies of the jury instructions,
12 if you want to add them to your cart.

13 THE CLERK: I need a clean copy.

14 MR. HOTALING: Just to make sure I'm clear, are all the
15 jurors getting individual copies, or are you sending one copy
16 back of the jury instructions?

17 LAW CLERK: We are sending one. And we can make extra
18 copies if you think that's --

19 MR. HOTALING: I sometimes think it's nice to have
20 multiple copies in case different jurors want to flip through
21 different copies.

22 THE COURT: I think that is a good idea.

23 MR. HOTALING: I would suggest a half dozen, if not a
24 full dozen of the jury instructions.

25 LAW CLERK: We will do that.

1 MR. HOTALING: Perfect. And we are just getting a
2 cart -- oh, the cart is here -- to take the exhibits back.

3 THE COURT: Excuse me?

4 MR. HOTALING: And we have a cart on which we will put
5 the exhibits --

6 THE COURT: A cart.

7 MR. HOTALING: -- on which we will put the exhibits to
8 send back to the members of the jury.

9 THE COURT: And now are you -- you are going to -- and
10 you said you were going to leave me your phone numbers or
11 something?

12 MS. MALIZIA: And to be clear, your Honor, we are
13 including the defendant's exhibit and the summary chart as well
14 in the exhibits we are sending back.

15 LAW CLERK: And then Mr. El Bey's cell number or --

16 THE COURT: Yes.

17 MR. FUENTES: And, your Honor, I had a question as
18 standby counsel.

19 THE COURT: Pardon?

20 MR. FUENTES: I have a question as standby counsel.

21 With the jury now deliberating and the evidence now
22 closed, would the Court now entertain a request that I be
23 discharged as standby counsel?

24 THE COURT: Well, I hate tying you up like this,
25 Mr. Fuentes, but I can imagine -- very unlikely -- but I can

1 imagine the jury -- I can imagine the jury having a question.

2 MR. FUENTES: Understood. I'm happy to stay. I'm happy
3 to stay if the Court wants me to. I just was professionally
4 obligated to ask.

5 THE COURT: No. I appreciate it. We are very grateful
6 for your patience because I know it's been difficult for you.

7 MR. FUENTES: Thank you.

8 And, of course, as standby counsel, I haven't been trial
9 counsel, there were -- I did not interpose any objections during
10 the trial --

11 THE COURT: Of course. No, no.

12 MR. FUENTES: -- to any of the procedures.

13 I raised one issue with the jury instruction because I
14 thought I might have had to argue. But I hope the Court and the
15 parties understand that I -- at no time did I view it my place to
16 object to anything that was going on.

17 THE COURT: No, I understand. That was fine.

18 MR. FUENTES: Thank you.

19 THE COURT: You know, it just occurs to me, I didn't
20 tell the jury that they should go home at 5:00 o'clock. Did I?

21 THE MARSHAL: I was going to ask you that. Do you want
22 them to go home?

23 THE COURT: What is the general practice?

24 THE MARSHAL: Generally, judges allow them to go, based
25 on train schedules and childcare, whatever time they go to, and

1 if they don't return --

2 THE COURT: Should we ask them when they'd like to break
3 and come back?

4 THE MARSHAL: Do you want me to go ask them at 5:00
5 o'clock?

6 Do you need the two alternates, or send them home?

7 THE CLERK: You can send them home.

8 THE COURT: Yeah. So say we'd like to break at 5:00 and
9 resume, say, at 9:30 tomorrow.

10 THE MARSHAL: 9:30.

11 THE COURT: But if they feel strongly they want to stay
12 or come in earlier or later, we will.

13 THE DEFENDANT: Judge, do we sit here until 5:00?

14 THE COURT: I'm just waiting to hear whether the jury
15 wants -- will leave at 5:00 o'clock.

16 So, you see, the problem is you will want to be here
17 when the jury -- well, the jury might have a question, and you
18 would want to see the question, and so on. And you would
19 want -- you should be present when the jury returns with a
20 verdict.

21 So I was thinking that if they stayed after 5:00
22 o'clock, if they have a question at 7:00 o'clock, what are we
23 supposed to do? We are all scattered to the winds.

24 So I was hoping they would stop at 5:00 and then resume
25 at 9:30 tomorrow. And you can't predict the length of the jury

1 deliberation, but it would be good if, assuming they will do
2 that, if you'd come back at 9:30 tomorrow.

3 THE DEFENDANT: I'll be here tomorrow at 9:30. That's
4 no problem.

5 So you want us to stay until 5:00, and then if they
6 don't do anything, come back tomorrow at 9:30.

7 THE COURT: Yes. If -- yeah, I would prefer you stay to
8 5:00 and resume tomorrow at 9:30. I'm just waiting to see what
9 they want to do --

10 THE DEFENDANT: Okay.

11 THE COURT: -- because they may want to -- you know,
12 often you have a situation where the jurors are really eager to
13 end their involvement in the case. And they might prefer to stay
14 a couple of hours more rather than having to come back tomorrow.

15 Yes?

16 THE MARSHAL: They will let me know before 5:00 o'clock
17 how late they want to go. That's the best I could get out of
18 them, your Honor.

19 THE COURT: Okay. That's great. All right.

20 So I don't know. So what should I do?

21 LAW CLERK: we have the phone numbers. So we will let
22 the parties know that they have left. So you don't have to stay
23 in the courtroom.

24 THE DEFENDANT: Just stay in the building?

25 LAW CLERK: Just very close by.

1 THE COURT: Could we have a conference call? Because we
2 are not going to be talking to the jury, obviously.

3 LAW CLERK: But if the jury comes back, you have to be
4 here to enter the verdict.

5 THE COURT: Excuse me?

6 LAW CLERK: If the jury comes back at 6:30 or 7:00, you
7 have to be here to enter the verdict. So the conference call
8 wouldn't resolve...

9 THE COURT: No, I was thinking if they had a question.

10 LAW CLERK: Right. But I don't know if we can leave
11 until they are done for the day because if they finish at 6:45,
12 we all have to be here to hear the verdict.

13 THE COURT: Well, I'm not going to stay until 6:45.
14 I'll come back.

15 So if they wanted to stay beyond 5:00, would that mean
16 they would get dinner? Does the Court provide?

17 THE MARSHAL: Well, the cafeteria is closed. I have
18 never had a jury go to dinner, no.

19 MS. MALIZIA: Your Honor, if I may, you can also put
20 reasonable time limits on their deliberations tonight.

21 It's understandable that you would want for them to
22 continue. But for them to continue, not only do we have to be
23 present but the court reporter has to be present, we need your
24 deputy here.

25 If any of those people can't make it past 5:00 or 5:30,

1 then it would probably be prudent to release the jury and tell
2 them to come back at 9:30 if they are still deliberating at that
3 time.

4 THE COURT: well, so as I think back to my -- I have
5 never had a criminal case, but as I think back to my civil cases,
6 I don't remember a case in which jurors wanted to stay around
7 after 5:00 clock.

8 Is it common?

9 MS. MALIZIA: Usually if you give people the opportunity
10 to leave, if they haven't already reached a decision, they will
11 take you up on that.

12 THE COURT: So I could prod them and say, really, you
13 know, because Mr. El Bey lives in Calumet City -- it's not that
14 close.

15 MS. MALIZIA: That's right, your Honor.

16 Again, it's up to the Court. Obviously, you can't
17 release them until they have reached a verdict or are deadlocked,
18 but you can certainly put reasonable limits on how late they stay
19 today.

20 THE COURT: How about this? How about if I will wait
21 until five of 5:00. But why don't -- how about if we told them
22 because of where people live and other commitments and so on,
23 people involved in -- the staff and a number of people who have
24 to be here, that if they feel they are going to go beyond 5:30
25 then they ought to break off and come back.

1 THE MARSHAL: I will tell them.

2 THE COURT: Okay. Thank you. That's the best I can
3 think of.

4 MS. MALIZIA: I think that's fine, Judge.

5 (Proceedings recessed at 3:38 p.m. to 4:48 p.m.)

6 THE COURT: So shall we invite the jury back?

7 MS. MALIZIA: Your Honor, if we could address just one
8 issue on the record before?

9 THE COURT: Sure, so we will wait just a minute.

10 MS. MALIZIA: Your Honor, regarding the forfeiture
11 issue, we weren't sure it was clear to the defendant whether or
12 not he had a choice to have either the jury or your Honor decide
13 the forfeiture issue, that waiving the jury didn't necessarily
14 waive forfeiture or any other right he may or may not think he
15 has, that the issue ultimately will be decided by you, you or the
16 jury.

17 And if we could get on the record his preference.

18 THE COURT: Yes. I thought he had said that he wanted a
19 jury.

20 THE DEFENDANT: I did.

21 THE COURT: I'll ask him again.

22 THE DEFENDANT: I said I wanted the jury to do it.

23 THE COURT: Excuse me?

24 THE DEFENDANT: I said I wanted the jury to do it.

25 MS. MALIZIA: We just wanted the record to be clear.

1 THE COURT: Excuse me?

2 MS. MALIZIA: We just wanted the record to be clear and
3 if that is the case.

4 Let's bring the jury in.

5 THE COURT: Well, if it's the case and if there is a
6 guilty verdict, I'll go directly to it because I don't think it
7 will take long.

8 MR. HOTALING: Agreed.

9 MS. MALIZIA: Agreed. Thank you, your Honor.

10 (Proceedings in open court at 4:50 p.m. Jury in.)

11 THE COURT: So welcome back, ladies and gentlemen of the
12 jury. I understand that there is a verdict. And assuming that's
13 correct, could the foreperson please give me the verdict?

14 Okay. The jury has -- the jury has unanimously found
15 that Mr. El Bey is guilty on all -- on all -- on all of the eight
16 counts.

17 And I had mentioned to Mr. El Bey earlier that he has a
18 right to poll the jury, which means ask each of the individual
19 jurors whether it is indeed, as indicated by their signatures,
20 but it is indeed -- does each juror agree with this form that I
21 have been handed.

22 Would you like to do that, Mr. El Bey?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. So let me ask the lawyers, is there
25 any particular form of words that I'm supposed to use?

1 MR. HOTALING: Judge, the traditional language is: was
2 this and is this now your verdict.

3 THE COURT: Okay. I was given the form. Thank you.

4 Okay. So I'll say, Mr. Adams, was this and is this now
5 your verdict?

6 JUROR ADAMS: Yes.

7 THE COURT: Thank you.

8 Miss Chiappelli, was this and is this now your verdict?

9 JUROR CHIAPPELLI: Yes.

10 THE COURT: Mr. Chiappelli. I'm sorry. I always make
11 that error. Okay.

12 Miss Fetty, was this and is this now your verdict?

13 JUROR FETTY: Yes.

14 THE COURT: Miss Fleita, was this and is this now your
15 verdict?

16 JUROR FLEITA: Yes.

17 THE COURT: And Mr. Shannon, was this and is this now
18 your verdict?

19 JUROR FOX: Ms. Fox.

20 THE COURT: I'm sorry. Miss Fox. It's Shannon Fox.
21 That's your first name.

22 JUROR FOX: Shannon Fox. Yes.

23 THE COURT: Mr. Gibbons, was this and is this now your
24 verdict?

25 JUROR GIBBONS: Yes.

1 THE COURT: Mr. Ilagan, was this and is this now your
2 verdict?

3 JUROR ILAGAN: Yes.

4 THE COURT: Miss Jerele, was this and is this now your
5 verdict?

6 JUROR JERELE: Yes.

7 THE COURT: Mr. Jones, was this and is this now your
8 verdict?

9 JUROR JONES: Yes.

10 THE COURT: Mr. Mauro, was this and is this now your
11 verdict?

12 JUROR MAURO: Yes.

13 THE COURT: Miss Sawko, was this and is this now your
14 verdict?

15 JUROR SAWKO: Yes.

16 THE COURT: And Miss Smith, was this and is this now
17 your verdict?

18 JUROR SMITH: Yes.

19 THE COURT: And so say you all?

20 THE JURY: Yes.

21 THE COURT: Okay. Thank you. Okay.

22 Now, there are some loose ends to be noted. There is
23 a -- there is a final issue here of forfeiture which has to
24 be -- unfortunately, it has to be treated separately. It
25 couldn't be part of your initial determination of guilt.

1 But Mr. El Bey has exercised his right to have the jury
2 determine certain criminal forfeiture allegations in the
3 complaint because you remember that there was a good deal of
4 testimony about what Mr. El Bey did with the money that he
5 received when he applied for refunds to the Internal Revenue
6 Service.

7 And I'm going to read some very brief instructions and
8 then -- I don't like to do it to you -- but then I have to ask
9 you to consider these. You can either do it this afternoon, if
10 you want, I don't -- this is not an elaborate, complicated
11 matter -- or else you could come back in the morning. So I'm
12 sorry about that, but I'm required to do this.

13 So in a part of the indictment that wasn't discussed
14 previously, the government is asking for a forfeiture of certain
15 property that Mr. El Bey has obtained.

16 The law provides that when a defendant is convicted of
17 mail fraud, which were the first two counts, he can be required
18 to forfeit to the United States certain property obtained with
19 the proceeds. And you will have to consider whether this law is
20 applicable to the property in question.

21 So forfeiture means that, you know, you own something
22 but you forfeit it. You have lost it. You no longer have rights
23 in it because you violated a federal law. That's how you got the
24 property.

25 You're not allowed to keep it. You have to give it back

1 to the -- in this case, the government. That's what the
2 property -- that is, the money that he got illegally was used to
3 buy certain property, right.

4 So the government, in effect, is trying to follow the
5 money that it lost through the fraud into the property that
6 was -- not all the property, some of the property that was
7 obtained with the proceeds of the fraud.

8 Again, you are required to consider the evidence. You
9 heard evidence about what happened to the money, what it was used
10 for. And you will deliberate together, and you will need to
11 reach a unanimous verdict, although the burden of proof is
12 different.

13 I will explain that. You can consider all the evidence
14 you heard even though it wasn't directly focused on forfeiture.
15 The government has alleged forfeiture. But, once again, just the
16 allegation is not evidence. And you'll have to make a judgment
17 whether there was forfeiture because Mr. El Bey denies it.

18 The government has the burden of proof, but it's not
19 proof beyond a reasonable doubt. All it has to prove with this
20 allegation, it has to prove a preponderance of the evidence,
21 which means when you weigh the evidence, if the evidence in favor
22 of guilt is stronger than the evidence against guilt, even if
23 it's only slightly stronger, even though it is like a 51 percent
24 more probably true allegation than false, then that's enough for
25 the government to prevail.

1 Again, the defendant does not have a burden of proof.
2 He can just be silent and say nothing.

3 But if you're satisfied the government has proved that
4 it's more likely than not that there was this -- there was a
5 forfeiture because of the conduct of the defendant, then the
6 government prevails.

7 Now, what the government is seeking forfeiture of is two
8 pieces of property. One is the house that you heard about at
9 South Hoxie Avenue in Calumet City here, the government alleging
10 that the house was bought with money that Mr. El Bey improperly
11 obtained from the Internal Revenue Service.

12 The other is a vehicle called a Quicksilver 2010 Buick
13 LaCrosse four-door sedan. And you heard testimony about this
14 acquisition. So those are the two items.

15 And to find that it's subject to forfeiture, you have to
16 be satisfied that the government proved that the property indeed
17 was derived from the proceeds of the fraud that he committed
18 against the government. There has to be a connection between
19 those properties alleged to be forfeitable and the offenses
20 charged in those first two counts, the counts about mail fraud.

21 In other words, to simplify, you have to find that the
22 property and the Buick were obtained with some part of that
23 \$600,000 which he received as a result of his first two -- I
24 don't mean chronologically, first two -- but the checks he
25 received which are in Counts 1 and 2 where he actually got

1 \$300,000 checks from the government. Those are the mail fraud
2 violations.

3 So, as I said, the last point about the connection, when
4 I say there has to be a connection between the property and the
5 offense, I don't mean just some accidental connection,
6 coincidence, something like that. It has to be -- you know, it
7 has to be significant; money actually used to obtain property,
8 money that he wasn't entitled to.

9 There is an instruction here which I don't think is
10 applicable to this case -- if I'm wrong, I will let the
11 government point it out -- that's the definition of proceeds. I
12 think that's straightforward.

13 We're talking about money obtained from the Internal
14 Revenue Service improperly and then what the money was used for.
15 And the government's argument is it was used to buy the house and
16 the car, and so that's property that's been forfeited to the
17 federal government.

18 I think that's clear enough without the
19 particular -- there is one little -- I don't know if this has any
20 application, but you want to consider this.

21 The government would be entitled to forfeiture even if
22 the property is no longer in the defendant's possession or the
23 government can't find it. It might be -- it might never be able
24 actually to benefit from having it forfeited if it can never find
25 the property, but if the property vanished and then later was

1 found, the government -- it would be the government's property.
2 It would have been forfeited.

3 I'll read you the special forfeiture verdict form. It's
4 very short and really, really shouldn't cause any confusion, but
5 I will read it anyway.

6 So it says: with regard to the forfeiture allegation in
7 the indictment, that the real property, the real estate, the
8 house located at 439 South Hoxie Avenue, Calumet City, Illinois,
9 is subject to forfeiture. we, the jury, find that the property
10 constitutes or was derived from proceeds traceable to the offense
11 for which the defendant, Hakeem El Bey, has been convicted as
12 charged in Counts 1 and 2 of the indictment.

13 Then there are two lines. One says yes, and one says
14 no.

15 And then 2, essentially the same: with regard to the
16 forfeiture allegation in the indictment, that a Quicksilver 2010
17 Buick LaCrosse four-door sedan, I'll leave out the -- what is a
18 VIN?

19 MR. HOTALING: Vehicle identification number.

20 THE COURT: I will spare you the multidigit vehicle
21 identification number with a mixture of letters and numbers.

22 Okay. with regard to the forfeiture allegation
23 involving the Buick, that the Buick is subject to forfeiture.
24 we, the jury, find that the vehicle, A -- and this is the same
25 language as for the house -- constituted or was derived from

1 proceeds traceable to the offense for which the defendant, Hakeem
2 El Bey, has been convicted as charged in Counts 1 and 2 of the
3 indictment.

4 Again, yes, no, and then a place for signatures, and
5 that's it.

6 So I say, what I will do -- I will have a brief sidebar
7 first -- but what I propose to do is to send you back to the jury
8 room with these instructions and the verdict forms. But you will
9 decide whether you want to stay and decide the forfeiture issue
10 this afternoon or whether you'd like to come back tomorrow
11 morning at 9:30 and do it.

12 And is there anything further that I should say or you
13 should say?

14 MR. HOTALING: Well, Judge, I think we could do this in
15 maybe about 30 seconds at sidebar.

16 THE COURT: Oh, at sidebar.

17 MR. HOTALING: Just really quick.

18 (Proceedings heard at sidebar:)

19 MS. MALIZIA: Your Honor, customarily the parties are
20 entitled to argument on the forfeiture issue. The government is
21 willing to waive their argument, but Mr. El Bey, if he wishes to
22 have an argument --

23 THE COURT: Would you like --

24 MS. MALIZIA: -- should have that option.

25 THE DEFENDANT: Yes.

1 THE COURT: -- to address the forfeiture issue?

2 THE DEFENDANT: I would.

3 THE COURT: Okay.

4 MR. HOTALING: We will waive. The government will
5 waive.

6 THE COURT: Okay. Fine. Is there anything else?

7 MR. HOTALING: That's it.

8 MS. MALIZIA: That's it.

9 THE DEFENDANT: You know what, I think they're going to
10 take it anyway. It don't matter.

11 THE COURT: I'm sorry. Do you want to?

12 THE DEFENDANT: No, no. You know what --

13 MR. HOTALING: You have a right.

14 THE DEFENDANT: I don't have the right, so no way. I'm
15 not going to even play with it. It's just a waste of time.

16 THE COURT: All right.

17 (Proceedings heard in open court:)

18 THE COURT: Okay. Ladies and gentlemen, you will go
19 back to the room and decide whether you want to deal with this
20 today or tomorrow, and we will wait for you.

21 (At 5:09 p.m. jury out.)

22 MR. FUENTES: Judge, I have a repetitive request.

23 THE COURT: Excuse me?

24 MR. FUENTES: I have a repetitive request.

25 THE COURT: To be released?

1 MR. FUENTES: Well, with the verdict delivered on
2 liability at this point, I thought perhaps it may be more
3 appropriate or maybe the Court believes it would be okay to
4 release standby counsel, discharge him at this time.

5 THE COURT: Yes. The only thing is that I do want
6 to -- I do want to -- I do want to say something about
7 post-judgment motions.

8 And I do want to say -- and I do want to ask
9 Mr. Hotaling and Ms. Malizia about bail.

10 MS. MALIZIA: Your Honor, the defendant is currently
11 free on a personal recognizance bond. And we have no intention
12 of moving for its revocation.

13 THE COURT: That's fine. That is what I wanted to know
14 exactly.

15 MS. MALIZIA: We can continue bail.

16 THE COURT: All right. But I did want to also mention
17 that if I'm right, that if Mr. El Bey wants to file post-judgment
18 motions, he can within 14 days, is that correct?

19 MS. MALIZIA: That is correct, your Honor.

20 THE COURT: Okay. So, Mr. El Bey, you know, a defendant
21 can always --

22 MR. HOTALING: Judge, I think we have a note from the
23 jury.

24 THE MARSHAL: The jury is going to stay.

25 THE COURT: They want to stay.

1 THE MARSHAL: They want to stay.

2 THE COURT: Okay. Thank you very much.

3 THE MARSHAL: This is the earlier note with the verdict.

4 THE COURT: Yes. I just wanted to mention that it is
5 permitted to a defendant to file post-judgment motions within
6 14 days. This is separate from an appeal.

7 This would be a motion to me if you thought there were
8 irregularities, mistakes, the jury verdict was all mistaken, they
9 didn't weigh the evidence. whatever you wanted to do, you can
10 file that within 14 days.

11 That is specifically separate from your right to appeal.
12 But the right to appeal doesn't click in until the sentencing.

13 THE DEFENDANT: Okay.

14 THE COURT: So what happens after a guilty verdict is
15 that the probation service, which is a branch of the judiciary,
16 does an investigation of the defendant and trying to -- family,
17 personal history, health, criminal record or not, no criminal
18 record. And that information is then used by the judge in
19 deciding on a sentence.

20 And with regard to representation, I would strongly urge
21 you -- but it's your choice -- to have a lawyer assist you with
22 regard to the sentencing process.

23 Because what happens is the probation service may or may
24 not make recommendations, but they will submit something to me
25 and to you called a presentence report. And that report will

1 contain a lot of information that the service believes bears on
2 the relevant punishment.

3 So then I have to have a hearing, which you would be
4 present and the government lawyers, at which commonly the parties
5 will make recommendations for sentencing.

6 Now, this process, sentencing process is extremely
7 complicated, for which I apologize on behalf of the judiciary.
8 Because the criminal statutes tend to set forth broad ranges
9 within which a defendant can be sentenced, broad ranges for
10 prison, and broad ranges for fines.

11 There is a possibility of probation, where the defendant
12 is not actually imprisoned but is subject to various
13 restrictions.

14 So further complicating it, the U.S. Sentencing
15 Commission has set forth Guidelines, suggested sentences within
16 the statutory range. And the sentencing judge is required to
17 consider the Guidelines, but he isn't bound by the Guidelines.
18 He is bound by the statutory range and can't go below the minimum
19 or above the maximum, but he isn't bound by the Guidelines.

20 In fact, he is required to consider whether a Guideline
21 sentence for a particular defendant would be consistent with
22 certain statutory sentencing factors having to do with the
23 gravity of the crime, the need for deterrence, special
24 characteristics of the defendant, and so on.

25 As a further complication, when a defendant is convicted

1 of a felony -- which just means a crime for which a sentence of
2 more than a year is permitted -- the judge is required to impose
3 certain what are called conditions of supervised release which
4 means that when -- if you receive a prison term, when your term
5 is completed, these conditions of supervised release kick in.

6 In other words, you are released at the end of the
7 prison term, but you are subject to continued restrictions.

8 Now, if it's a felony conviction, there are certain
9 mandatory conditions, like not being allowed to own a gun. There
10 are only a few of those. But in addition to that, there are an
11 indefinite number of optional restrictions. And some are called
12 standard conditions. Some are called special conditions. The
13 judge can make up his own restrictions.

14 And it's very, very important that the defendant be
15 prepared to challenge particular restrictions that the government
16 might want to impose. I mean, that's been a serious problem. At
17 the appellate -- in the appellate court, we have reversed a
18 number of impositions of these conditions on the ground they are
19 unduly restrictive.

20 But it's very important that the defendant be able to
21 point to restrictions that the government wants or that the judge
22 may want but which are inappropriate.

23 Now, I have stressed this complexity, which is actually
24 greater than what we have faced in the trial, because I think it
25 is very, very helpful for a defendant to have a lawyer in the

1 sentencing process.

2 And it's not -- in the sentencing process, it's not --
3 it does not involve the big issues that have concerned you. It's
4 just, the jury having spoken and so on, the judge has to make a
5 sentence. And you want to have as lenient a sentence as
6 possible.

7 Now, it's after the sentence is imposed, whatever it is,
8 that you can appeal. In fact, the government can appeal too if
9 they think the sentence is too light, although it's very rare for
10 the government to appeal sentences.

11 So in order to both make a good argument for a light
12 sentence and also in order to preserve a good shot at an appeal,
13 it would be very, very helpful for you to have a lawyer because
14 this sentencing stuff is so complicated that the district judges
15 frequently screw up and get reversed. But most of the time they
16 are affirmed.

17 So we appellate judges, speaking in my appellate judge
18 capacity, we are supposed to give significant deference to a
19 district judge's judgment.

20 So I want to be sure you can -- you want to continue to
21 fight at various levels, and the next -- so you can file
22 post-judgment motions.

23 THE DEFENDANT: Judge --

24 THE COURT: You can also fight hard at the sentencing to
25 make sure you can make as strong a case as possible.

1 THE DEFENDANT: Okay. Do I -- with the motion, do I
2 send it to you? Do I file it on the case or do I just --

3 THE COURT: I'm sorry?

4 THE DEFENDANT: with the motion for 14 days --

5 THE COURT: Yes.

6 THE DEFENDANT: -- do I send them to you, file them on
7 the case, or send them to you or what?

8 THE COURT: Well, you file them in the ordinary way that
9 you filed other documents.

10 THE DEFENDANT: Oh, just keep putting them on the case.

11 MR. HOTALING: Yes.

12 THE DEFENDANT: Yes.

13 THE COURT: That's fine.

14 THE DEFENDANT: And I have 14 days?

15 THE COURT: I hope at least you will think about the
16 possibility of retaining a lawyer for the sentencing. And, you
17 know, if you can't afford a lawyer, I can appoint a lawyer. It
18 wouldn't cost you anything.

19 THE DEFENDANT: Okay.

20 THE COURT: And, Mr. Fuentes, I know you had some
21 initial concerns about him, but Mr. Fuentes is a very good and
22 experienced lawyer.

23 THE DEFENDANT: And nothing personal. He knows that,
24 though.

25 THE COURT: What?

1 THE DEFENDANT: Nothing personal. You know that.

2 THE COURT: If you don't want Mr. Fuentes, we can find
3 another one.

4 THE DEFENDANT: Okay. So what do I do now? I mean, I
5 know --

6 THE COURT: Well, we are just waiting to hear about the
7 forfeiture. But after that, as Mr. Hotaling explained, you are
8 still on bail. Your bail conditions have not been changed.

9 THE DEFENDANT: I'm not going nowhere. You know I'm not
10 going nowhere.

11 THE COURT: You are not going to be arrested or
12 anything.

13 THE DEFENDANT: But one question I do have, how long
14 would they allow me to get my stuff out the house? How soon they
15 coming for the house, or whatever?

16 THE COURT: The forfeiture, that's a good question.

17 MS. MALIZIA: They haven't decided it yet.

18 MR. HOTALING: It depends on what the jury decides.

19 THE COURT: That's an excellent question.

20 THE DEFENDANT: I'm just asking.

21 THE COURT: If the jury finds that it's forfeited, how
22 long would Mr. El Bey have to --

23 THE DEFENDANT: Get my --

24 THE COURT: Couldn't he stay in his house even if you
25 now own it? I mean, where is he going to live?

1 MR. HOTALING: Judge, we are going to have -- those are
2 issues that we're not in a position to answer today. We will
3 have to do some looking into that. We will have to do some
4 research into that.

5 THE COURT: Now, would that be something that -- I mean,
6 suppose --

7 THE DEFENDANT: Yeah. What I'm saying is, I just don't
8 want them to rush on me and just throw me in the street.

9 THE COURT: No, no, no. Absolutely.

10 The question I want to ask the government lawyers is
11 suppose -- I don't think you will do this, but suppose
12 you -- suppose the jury brings back a verdict of forfeiture and
13 you say: All right. Mr. El Bey, you're out. You're out of your
14 house and you're out of your Buick.

15 would he be able -- do I have authority to prevent it,
16 to regulate the implementation of the forfeiture?

17 MR. HOTALING: Judge, as I understand it, there will be
18 a preliminary order of forfeiture that would need to be entered.
19 And then at the time of the sentencing, there would be a --

20 THE COURT: I'm sorry. Speak a little louder.

21 MR. HOTALING: A preliminary order of forfeiture. And
22 there would be a final order of forfeiture that your Honor would
23 need to consider at the time of sentencing.

24 Actually, it's a preliminary order of forfeiture at the
25 sentencing, which will -- so there's a variety of steps that need

1 to be completed before any sort of action could be moving against
2 the house.

3 THE COURT: That's fine.

4 MR. HOTALING: So it's not anything immediate. The
5 preliminary -- go ahead.

6 MS. MALIZIA: I was going to say, we will provide you a
7 copy of that order but it won't be --

8 THE COURT: Will I be notified when -- of these
9 different stages in the forfeiture?

10 MS. MALIZIA: Well, your Honor, after you -- assuming
11 you do ultimately enter the order of forfeiture, the government
12 will proceed on it, but I can't give you an exact timeline now.

13 I don't believe the Court is traditionally notified of
14 when that order is executed.

15 THE COURT: I see. So the jury's verdict is not the
16 equivalent of a --

17 MR. HOTALING: Of an eviction notice?

18 THE COURT: Of an eviction notice.

19 MS. MALIZIA: Right. But just as in the sentencing
20 phase of the defendant, you will have to enter an order, a J&C, a
21 Judgment and Conviction Order if there is prison time. There is
22 a similar order for the forfeiture finding as well.

23 THE COURT: So the forfeiture is not implemented until
24 the sentence is imposed?

25 MS. MALIZIA: That's correct, your Honor.

1 THE COURT: Okay. So Mr. El Bey, so there is no danger
2 of your being evicted --

3 THE DEFENDANT: Okay.

4 THE COURT: -- in the next several months probably.

5 MR. HOTALING: That's correct.

6 THE COURT: How long is it likely to take for the
7 probation service?

8 MS. MALIZIA: Your Honor, typically it's 90 days between
9 conviction and sentencing.

10 MR. HOTALING: But that might get extended based on your
11 resolution of post-trial motions. So any number of different
12 things can factor into when exactly you reach that sentencing
13 date.

14 THE COURT: But certainly for several months, there will
15 be no danger of eviction.

16 MR. HOTALING: I think that's right.

17 THE COURT: Would you like to sit down, everybody, or
18 just wait?

19 MR. HOTALING: Yes. We won't go anywhere.

20 THE COURT: Okay.

21 THE DEFENDANT: Excuse me.

22 THE COURT: Yes.

23 THE DEFENDANT: Can I ask for an extension, maybe a
24 month extra on filing the 14-day report?

25 THE COURT: Let me ask --

1 MS. MALIZIA: we have no objection to that extension,
2 your Honor.

3 THE COURT: oh, okay. okay.

4 MR. HOTALING: How much additional time do you need,
5 sir?

6 THE DEFENDANT: Just asking for 30 days.

7 MR. HOTALING: No objection.

8 THE DEFENDANT: Thank you.

9 THE COURT: I'll enter an order to that effect.

10 okay. I'm informed that the jury has reached a
11 unanimous decision in regards to the forfeiture count, so you can
12 bring the jury in.

13 (Proceedings in open court at 5:37 p.m. Jury in.)

14 THE COURT: welcome back, ladies and gentlemen.

15 I think we have the same foreperson, is that correct?

16 THE FOREPERSON: Yes.

17 THE COURT: So the jury has a unanimous verdict?

18 THE FOREPERSON: Yes.

19 THE COURT: Could you hand me the verdict?

20 THE FOREPERSON: Absolutely.

21 THE COURT: Okay. well, thank you very much, ladies and
22 gentlemen. I'll read the verdict.

23 So with regard to the forfeiture allegation in the
24 indictment, that the real property located at 439 South Hoxie, it
25 says: Subject to forfeiture. we, the jury, find that the

1 property constitutes or was derived from proceeds traceable to
2 the offense in which the defendant, Hakeem El Bey, has been
3 convicted as charged in Counts 1 and 2 of the indictment.

4 And the answer is yes, the unanimous answer is yes, it
5 does constitute or was derived from proceeds traceable to the
6 offense.

7 And with regard to the forfeiture allegation in the
8 indictment about the Buick, again, we, the jury, find that the
9 vehicle constitutes or was derived from proceeds traceable to the
10 offense for which the defendant, Hakeem El Bey, has been
11 convicted as charged in Counts 1 and 2 of the indictment.

12 And, Mr. El Bey, would you like me to poll the jury
13 again, the individual jurors?

14 THE DEFENDANT: No, Judge.

15 THE COURT: Excuse me?

16 THE DEFENDANT: No, you don't have to.

17 THE COURT: No. Okay.

18 well, that then, unless there is anything that the
19 government lawyers have to say?

20 MS. MALIZIA: Nothing from the government, your Honor.

21 THE COURT: well, then that completes the proceeding.

22 And I want to thank the jury. Obviously
23 attended very -- I mean, no drop-outs and attended to the
24 evidence very carefully and obviously an intelligent and alert
25 and conscientious jury. And we are very grateful for your

1 verdicts and thank you again.

2 And you are discharged. I don't know where you go next.

3 You will be led out. Thanks again.

4 (Proceedings in open court at 5:40 p.m. Jury out.)

5 THE COURT: The only other thing I have, I just got a
6 piece of information which is that the presentence report by the
7 probation officer will be completed in April. The earliest
8 possible sentencing date would be May 27th, approximately, a
9 little less than three months from now, but these dates may get
10 extended, delayed.

11 So unless there is further discussion to be had, I want
12 to thank the lawyers for the government for their vigorous
13 efforts on behalf of their client and Mr. El Bey for his efforts,
14 which were vigorous. I know you had certain disadvantages
15 because not being a lawyer, but you did, I think, the best you
16 could.

17 And grateful to the witnesses as well and to the court
18 staff, my law clerks.

19 MR. HOTALING: Thank you to you, your Honor.

20 MS. MALIZIA: Thank you, Judge.

21 THE COURT: So we will adjourn.

22 Mr. Fuentes?

23 MR. FUENTES: I'm here, Judge. Thank you.

24 THE COURT: So thank you very much. And you will remain
25 standby until we resolve it.

1 MR. FUENTES: Thank you. Understood.

2 THE COURT: And if Mr. El Bey decides he wants you or
3 another lawyer, you will let me know.

4 MR. FUENTES: Understood.

5 THE COURT: okay.

6 THE DEFENDANT: Look, can he help me, you know?

7 MR. FUENTES: And, Judge, we appreciate being of service
8 to the Court. As I mentioned earlier, we respond affirmatively
9 to Court appointments.

10 THE COURT: We are very grateful, just because I know
11 it's hard for you.

12 MR. HOTALING: Thank you again, your Honor.

13 (At 5:49 p.m. proceedings adjourned.)

14 C E R T I F I C A T E

15 I, Maellen E. Pittman, do hereby certify that the
16 foregoing is a complete, true, and accurate transcript of the
17 proceedings had in the above-entitled case before the Honorable
18 RICHARD A. POSNER one of the judges of said Court, at Chicago,
19 Illinois.

20

21 /s/ Maellen E. Pittman, FCRR, RDR

22 official Court Reporter

23 United States District Court

24 Northern District of Illinois

25 Eastern Division